

AR 3.17a



## U.S. Environmental Protection Agency National Priorities List

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21054 - 21077 Federal Register / Vol. 51, No. 111 / Tuesday, June 10, 1986 / Rules and Regulations

### ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 300  
[SW-FRL-2973-2]

#### Amendment to National Oil and Hazardous Substances Contingency Plan; National Priorities List

**AGENCY:** Environmental Protection Agency.  
**ACTION:** Final rule.

#### SUMMARY:

The Environmental Protection Agency ("EPA") is amending the National Oil and Hazardous Substances Contingency Plan ("NCP"), which was promulgated on July 16, 1982, pursuant to section 105 of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 ("CERCLA") and Executive Order 12316. CERCLA requires that the NCP include a list of national priorities among the known releases or threatened releases of hazardous substances, pollutants, and contaminants throughout the United States, and that the list be revised at least annually. The National Priorities List ("NPL"), initially promulgated as Appendix B of the NCP on September 8, 1983, constitutes this list and is being revised today by the addition of 170 sites to the final NPL. EPA has reviewed public comments on the listing of these sites and has decided that they meet the eligibility requirements of the NPL.

#### EFFECTIVE DATE:

The effective date for this amendment to the NCP shall be July 10, 1986. CERCLA section 305 provides for a legislative veto of regulations promulgated under CERCLA. Although *INS v. Chadha*, 462 U.S. 919, 103 S. Ct. 2764 (1983), cast the validity of the legislative veto into question, EPA has transmitted a copy of this regulation to the Secretary of the Senate and the Clerk of the House of Representative. If any action by Congress calls the effective date of this regulation into question, the Agency will publish a notice of clarification in the **Federal Register**.

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#### ADDRESSES:

Addresses for the Headquarters and Regional dockets follow. For further details on what these

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[\[Return to Table of Contents\]](#)**I. Introduction**

Pursuant to section 105 of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, 42 U.S.C. 9601-9657 ("CERCLA" or the "Act"), and Executive Order 12316 (46 FR 42237, August 20, 1981), the Environmental Protection Agency ("EPA" or "the Agency") promulgated the revised National Contingency Plan ("NCP"), 40 CFR Part 300, on July 16, 1982 (47 FR 31180) and amendments to the NCP on September 16, 1985 (50 FR 37624) and November 20, 1985 (50 FR 47912). The NCP and its amendments implement responsibilities and authorities created by CERCLA to respond to releases and threatened releases of hazardous substances, pollutants, and contaminants.

Section 105(8)(A) of CERCLA requires that the NCP include criteria for determining priorities among releases or threatened releases throughout the United States for the purposes of taking remedial action and, to the extent practicable, take into account the potential urgency of such action for the purpose of taking removal action. Removal action involves cleanup or other actions that are taken in response to releases or threats of releases on a short-term or temporary basis (CERCLA section 101(23)). Remedial action tends to be long-term in nature and involves response actions which are consistent with a permanent remedy for a release (CERCLA section 101(24)). Criteria for determining priorities for possible remedial actions financed by the Hazardous Response Trust Fund established under CERCLA are included in the Hazard Ranking System ("HRS"), which EPA promulgated as Appendix A of the NCP (47 FR 31219, July 16, 1982).

Section 105(8)(B) of CERCLA requires that these criteria be used to prepare a list of national priorities among the known releases or threatened releases of hazardous substances, pollutants, or contaminants throughout the United States, and that to the extent practicable, at least 400 sites be designated on this National Priorities List (NPL). An original NPL of 406 sites was promulgated on September 8, 1983 (48 FR 40658). The NPL has been expanded since then (see 49 FR 19480, May 8, 1984; 49 FR 37070, September 21, 1984; 50 FR 6320, February 14, 1985; and 50 FR 37630, September 16, 1985). On March 7, 1986 (51 FR 7935), EPA published a notice to delete eight sites from the NPL (see section VII of this preamble). Earlier, the Agency had proposed to add another 309 sites to the NPL (see 49 FR 40320, October 15, 1984; 50 FR 14115, April 10, 1985; and 50 FR 37950, September 18, 1985). The proposed update #5 rulemaking announced elsewhere in today's **Federal Register** adds 45 proposed sites to the NPL. In a second notice in today's **Federal Register**, the Agency is soliciting additional comments on 5 previously proposed sites (50 FR 6320). Today's rule adds 170 of the remaining proposed sites to the NPL, including 20 from the two 1985 proposals - Update #3 and Update #4 - on which no comments were received. This brings the number of final sites on the NPL to 703, with an additional 185 (including 47 Federal facilities) in the proposed category, for a total of 888 final and proposed sites.

Following the October 15, 1984, proposal, EPA carefully considered public comments submitted during the comment period and made some modifications in this final rule in response to those comments. Responses to major NPL policy comments are addressed in this preamble, as are generic HRS scoring comments. Responses to site-specific HRS comments are presented in the "Support Document for the Revised National Priorities List - 1986," which is a separate document available in the EPA dockets in Washington, D.C., and the Regional Offices (see Addresses).

### ***Public Docket Information***

The Headquarters public docket for the NPL will contain Hazard Ranking System (HRS) score sheets for each final site, a Documentation Record for each site describing the information used to compute the scores, a list of document references and the "Support Document for the National Priorities List - 1986." The Headquarters public docket is available for viewing by appointment only from 9:00 a.m. to 4:00 p.m., Monday through Friday excluding holidays. Requests for copies of the documents from the Headquarters public docket should be directed to the EPA Headquarters docket office. The HRS score sheets and the Documentation Record for each site in a particular EPA Region will be available for viewing in that Regional Office when this notice is published. The Regional dockets will also contain documents referenced in the Documentation Record which contain the background data EPA relied upon in calculating or evaluating the HRS scores and a copy of the "Support Document for the Revised National Priorities List - 1986." Copies of these background documents may be viewed in the appropriate Regional Office and copies may be obtained from each Regional docket. Documents with some relevance to the scoring of each site, but which were not used as references, may also be viewed and copied by arrangements with the appropriate EPA Regional Office. Requests for HRS score sheets, Documentation Records, background documents and copies of the Support Document should be directed to either Headquarters or the appropriate Regional Office docket (see Addresses section). An informal written request, rather than a formal request, should be the ordinary procedure for obtaining copies of these comments.

### ***Organization of the Preamble***

Section II of this preamble discusses the purpose and implementation of the NPL. The process EPA uses for the development of this rulemaking, and of the NPL in general, is discussed in Section III. NPL eligibility policies and eligibility issues raised by commenters are addressed in Section IV of this preamble. Section V addresses generic HRS issues, while Section VI summarizes score changes and discusses and disposition of the previously proposed sites. Deletion of sites from the NPL is discussed in Section VII. Section VIII provides information on the contents of the final rulemaking. Finally, EPA's regulatory impact analysis and Regulatory Flexibility Act analysis are discussed in Sections IX and X, respectively.

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## **II. Purpose and Implementation of the NPL**

### ***Purpose***

The primary purpose of the NPL is stated in the legislative history of CERCLA (Report of the Committee on Environment and Public Works, Senate Report No. 96-848, 96th Cong., 2d. Sess. 60 (1980)):

The NPL serves primarily informational purposes, identifying for the States and the public those facilities and sites or other releases which appear to warrant remedial actions. Inclusion of a facility or site on the list does not in itself reflect a judgment of the activities of its owner or operator, it does not require those persons to undertake any action, nor does it assign liability to any person. Subsequent government action in the form of remedial actions or enforcement actions will be necessary in order to do so, and these actions will be attended by all appropriate procedural safeguards.

The purpose of the NPL, therefore, is primarily to serve as an informational tool for use by EPA in identifying sites that appear to present a significant risk to public health or the environment. The initial identification of a site for the NPL is intended primarily to guide EPA in determining which sites warrant further investigation, to assess the nature and extent of the public health and environmental risks associated with the site, and to determine what CERCLA-financed remedial action(s), if any, may be appropriate. Inclusion of a site on the NPL does not establish that EPA necessarily will undertake response actions. Moreover, listing does not require any action of any private party, nor does it determine the liability of any party for the cost of cleanup at the site. A site need not be on the NPL to be the subject of CERCLA-financed removal actions, actions brought pursuant to section 106 or 107(a)(4)(b) of CERCLA, or remedial investigations/feasibility studies.

### **Implementation**

EPA's policy is to pursue cleanup of hazardous waste sites using the appropriate response and/or enforcement actions which are available to the Agency, including authorities other than CERCLA. Publication of sites on the NPL will serve as notice to any potentially responsible party that the Agency may initiate Fund-financed response action. The Agency will decide on a site-by-site basis whether to take enforcement or other action under CERCLA or other authorities, or whether to proceed directly with Fund-financed CERCLA response actions and seek recovery of response costs after cleanup. To the extent feasible, once sites are listed on the NPL, EPA will determine high-priority candidates for either Fund-financed response action or enforcement action through both State and Federal initiative. These determinations will take into account which approach is more likely to most expeditiously accomplish cleanup of the site while using the Fund's limited resources as efficiently as possible.

Funding of response actions for sites will not necessarily take place in the same order as the sites' ranking on the NPL. In addition, although the HRS scores used to place sites on the NPL may be helpful to the Agency in determining priorities for cleanup and other response activities among sites on the NPL, EPA does not rely on the scores as the sole means of determining such priorities. The information collected to develop HRS scores is not sufficient in itself to determine the appropriate remedy for a particular site. EPA relies on further, more detailed studies to determine what response, if any, is appropriate.

These studies will take into account the extent and magnitude of contaminants in the environment, the risk to affected populations and environment, the cost to correct problems at the site, and the response actions that have been taken by potentially responsible parties or others. Decisions on the type and extent of action to be taken at these sites are made in accordance with the criteria contained in Subpart F of the NCP. After conducting these additional studies, EPA may conclude that it is not desirable to conduct an Agency response action at some sites on the NPL because of more pressing needs at other sites, or because an enforcement action may instigate or force private party cleanup. Given the limited resources available in the Trust Fund, the Agency must carefully balance the relative needs for response at the numerous sites it has studied. It is also possible that EPA will conclude after further analysis that the site does not warrant response action.

Revisions to the NPL such as today's rulemaking may move some previously listed sites to a lower position on the NPL. If EPA has initiated action such as a remedial investigation or feasibility study (RI/FS) at a site, the Agency does not intend to cease such actions in order to determine if a subsequently listed site should have a higher priority for funding. Rather, the Agency will continue funding site studies and remedial actions once they have been initiated, regardless of whether higher-scoring sites are later added to the NPL.

The NPL does not determine priorities for removal actions; EPA may take removal actions at any site, whether listed or not, that meets the criteria of §§ 300.65-300.67 of the NCP. Likewise, EPA may take enforcement actions under applicable statutes against responsible parties regardless of whether the site is listed on the NPL, although, as a practical matter, the focus of EPA's enforcement actions has been and will continue to be on NPL sites.

A site cannot undergo Fund-financed remedial action until it is placed on the final NPL. However, an RI/FS can be performed at proposed sites pursuant to the Agency's removal authority under CERCLA, as outlined in § 300.68(a)(1) of the NCP. Section 101(23) of CERCLA defines "remove" or "removal" to include "such actions as may be necessary to monitor, assess and evaluate the release or threat of release . . ." The definition of "removal" also includes "action taken under Section 104(b) of this Act . . ." Section 104(b) authorizes the Agency to perform studies, investigations, and other information-gathering activities.

The Agency may elect to conduct an RI/FS at a proposed NPL site in preparation for a possible Fund-financed remedial action in a number of circumstances, such as when the Agency believes that delay in commencing the studies may create unnecessary risks to human health or the environment. In making such a decision, the Agency assumes the risk that after consideration of public comments and the consistent application of the HRS, it is possible that the proposed site might not qualify for the NPL. In assuming this risk, the Agency has determined that the desirability of expediting remedial action through the initiation of the investigation stage prior to placing a site on the NPL outweighs the risk of expending a limited amount of Fund monies for the RI/FS.

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### **III. Process for Establishing and Updating the NPL**

There are three mechanisms for placing sites on the NPL. The principal mechanism is the application of the HRS. Those sites that score 28.50 or greater on the HRS are eligible for listing. In addition, States may designate a single site as the State top priority. EPA may also place sites on the NPL pursuant to § 300.66(b)(4) of the NCP.

States have the primary responsibility for identifying sites, computing HRS scores, and submitting candidate sites to the EPA Regional Offices. EPA Regional Offices conduct a quality control review of the States' candidate sites, and may assist in investigating, sampling, monitoring, and scoring sites. Regional Offices may consider candidate sites in addition to those submitted by States. EPA Headquarters conducts further quality assurance audits to ensure accuracy and consistency among the various EPA and State offices participating in the scoring. The Agency then proposes the new sites that meet the criteria for listing and solicits public comment on the proposal. Based on these comments and further review by EPA, the Agency determines final scores and promulgates those sites that still qualify for listing.

On October 15, 1984, EPA proposed NPL Update #2 (49 FR 40320). All of the 244 proposed sites received HRS scores of 28.50 or higher. The cut-off score of 28.50 was the same cut-off score chosen for the previous NPL rulemakings.

The public comment period on the October 15, 1984, proposed rule ended December 14, 1984. To the extent practicable, EPA considered late comments received after the close of the formal comment period. EPA evaluated all comments received by May 7, 1986. Based on the comments received on the proposed rule, as well as further investigation by EPA and the States, EPA recalculated the HRS scores for individual sites where appropriate. EPA's response to site-specific public comments and explanations of any score changes made as a result of such comments are addressed in the "Support Document for the Revised National Priorities List - 1986." This document is available for review in the EPA dockets in Washington, D.C., and the Regional Offices (see Addresses). EPA's response to comments on NPL eligibility issues is included in Section IV of this preamble, while comments on generic HRS issues are discussed in Section V.

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## IV. Eligibility

CERCLA restricts EPA's authority to respond to certain categories of releases by expressly excluding some substances from the definition of "release". In addition, as a matter of policy, EPA may choose not to use CERCLA to respond to certain types of releases because other authorities can be used to achieve cleanup of these releases. Where such other authorities exist, and the Federal government can undertake or enforce cleanup pursuant to a particular established program, listing on the NPL to determine the priority or need for response under CERCLA may not be appropriate. Therefore, EPA has chosen not to consider certain types of sites for the NPL even though CERCLA may provide authority to respond. If, however, the Agency later determines that sites not listed as a matter of policy are not being properly responded to, the Agency may consider placing them on the NPL.

NPL eligibility policies of particular relevance to this final rule are discussed below and cover Federal facility sites, Resource Conservation and Recovery Act (RCRA) sites, mining waste sites, pesticide-application sites, and radioactive material sites.

### *Releases From Federal Facilities*

CERCLA Section 111(e)(3) prohibits use of the Trust Fund for remedial actions at Federally-owned facilities. However, pursuant to § 300.66(e)(2) of the NCP, amended on November 20, 1985 (50 FR 47912), the Agency can place Federal facilities on the NPL.

Prior to the proposal of NPL Update #2, EPA did not list any sites on the NPL where the release resulted solely from a Federal facility, regardless of whether contamination remained on-site or had migrated off-site. However, based on public comments received from previous NPL announcements, EPA proposed 36 Federal facilities for NPL Update #2 and solicited comments on the listing of Federal facilities on the NPL. All general comments received in response to that solicitation are addressed in the preamble to the **Federal Register** notice for the promulgation of the NCP amendments and the "Response to Comments Document - October 10, 1985" that accompanied that rulemaking. This document is available in the Headquarters public docket.

In a future rulemaking, EPA will add Federal facility sites to a separate section of the NPL and will provide the response categories and cleanup status codes for those sites. The same technical criteria that qualify non-Federal sites for the NPL will be used to qualify Federal sites.

EPA has not completed its review of the public comments received on the 36 Federal facility sites

proposed for this NPL update and, therefore is deferring rulemaking on these sites at this time.

### ***Releases From Resource Conservation and Recovery Act (RCRA) Sites***

#### **A. Background**

Since the first NPL final rule (48 FR 40658, September 8, 1983), it has been the Agency's policy to defer placing sites on the NPL that can be addressed by RCRA Subtitle C corrective action authorities. Prior to enactment of the Hazardous and Solid Waste Amendments of 1984 (HSWA), only releases to ground water from surface impoundments, waste piles, land treatment areas, and landfills that received RCRA hazardous wastes after July 26, 1982, and did not certify closure prior to January 26, 1983, (the effective date of the RCRA regulations for permitting land disposal facilities) were subject to corrective action requirements under Subtitle C. Therefore, these units were not eligible for listing unless they were abandoned, lacked sufficient resources or RCRA corrective action requirements could not be enforced.

The enactment of HSWA greatly expanded RCRA Subtitle C corrective action authorities. For example, under section 3004(u), hazardous waste treatment, storage and disposal facilities seeking RCRA permits must address all releases of hazardous constituents to any medium from solid waste management units, whether active or inactive. HSWA also provided new authority in Section 3004(v) to address releases that have migrated beyond the facility boundary if the permission of the owner of the affected property can be obtained. In addition, section 3008(h) authorizes EPA to compel corrective action or any response necessary to protect human health or the environment when there is or has been a release of hazardous waste at a RCRA interim status facility.

In light of the new authorities, the Agency proposed in the preamble to the April 10, 1985, proposed rule (50 FR 14118), a revised policy for listing of RCRA-related sites on the NPL. Under the proposed policy, listing on the NPL of RCRA-related sites would be deferred until the Agency determined that RCRA corrective measures were not likely to succeed due to factors such as:

1. The inability or unwillingness of the owner/operator to pay for such activities;
2. the inadequacies of the financial responsibility guarantees to pay for such costs; and
3. EPA or State priorities for addressing the sites under RCRA.

In addition, the Agency indicated that it intended to apply the RCRA listing policy to RCRA sites that were currently proposed or promulgated on the NPL and, in appropriate cases, delete sites from the NPL.

The Agency has evaluated the comments received on the proposed RCRA listing policy. Today, EPA is deciding and implementing major components of the final RCRA listing policy. Elsewhere in today's **Federal Register**, the Agency is proposing and requesting comments on additional components of the policy. A discussion of the policy follows.

#### **B. Components of the Final RCRA Listing Policy**

The final Agency policy is generally consistent with the proposal and with the Agency's previous RCRA listing policy. Sites not subject to RCRA Subtitle C requirements will remain eligible for the NPL. Examples include facilities that ceased treating, storing or disposing of hazardous wastes prior to November 19, 1980 (the effective date of Phase I of the RCRA regulations) and sites at which only materials exempted from the statutory or regulatory definition of solid waste or hazardous waste are managed. RCRA hazardous waste handlers to which Subtitle C corrective action authorities do not apply, such as hazardous waste generators or transporters not required to have interim status or a final RCRA permit, also remain eligible for the NPL. In most situations, listing of sites with releases that can be addressed under the RCRA Subtitle C corrective action authorities will be deferred.

Although sites that can be addressed by RCRA Subtitle C corrective action authorities generally will not be placed on the NPL, the Agency believes that certain sites subject to Subtitle C corrective action requirements should be listed if they meet all of the other criteria for listing (e.g., an HRS score of 28.5 or greater).

As noted in the preamble to proposed NPL Update # 3 (50 FR 14110, April 10, 1985), the Agency is concerned about owners or operators who are unwilling or unable to pay for corrective action and related activities. If an owner or operator appears to lack the financial resources to undertake necessary responses, it may be appropriate to use CERCLA authorities to protect human health or the environment. It may also be appropriate to use CERCLA authorities to address facilities at which necessary corrective actions under RCRA are unlikely to be performed. The Agency has identified three categories of facilities that meet these criteria:

1. Facilities owned by persons who are bankrupt;
2. facilities that have lost RCRA interim status and for which there are additional indications that the owner or operator will be unwilling to undertake corrective action; and
3. sites, analyzed on a case-by-case basis, whose owners or operators have shown an unwillingness to undertake corrective action.

Reasons for including sites on the NPL which fall into these categories are discussed below.

1. *Bankruptcy.* Once an entity is in bankruptcy, the entity's assets are protected by the courts. In such situations, the Agency does not have adequate assurance that funds will be available in a timely manner for response actions. Therefore, RCRA facilities that are bankrupt will be eligible for listing.
2. *Loss of authorization to operate/probable unwillingness to carry out corrective action.* RCRA Interim Status facilities lose authorization to operate when interim status is terminated (1) under RCRA section 3008(h), (2) by permit denial under RCRA section 3005(c), or (3) by operation of RCRA section 3005(e). For example, interim status is terminated under section 3005(e) when an owner or operator cannot or will not certify compliance with applicable ground water monitoring and financial responsibility requirements and submit a permit application. Permits are denied under section 3005(c) if the owner or operator has failed to submit an acceptable Part B permit application. It is likely that many of these interim status facilities that have lost authorization to operate may not be willing to carry out corrective action; facilities where this is the case may be placed on the NPL. In determining whether an owner/operator is not likely to be willing to carry out corrective action, the Agency will consider the compliance history of the facility, including particularly the existence of multiple or significant violations and the numbers and types of final enforcement actions taken against the facility.
3. *Case-by case determinations of unwillingness.* When EPA proposed to revise its policy with respect to listing RCRA sites on the NPL, the Agency explained that proposed or final sites at which remedial investigations/feasibility studies had been initiated might not be removed from the NPL. The Agency recognized that it might be disruptive to abandon CERCLA activities in some or all of these situations. Several sites are being added to the NPL based upon that aspect of the proposed policy.

At two sites that were included in proposed NPL Update # 2, Fund-financed remedial planning is now in progress. These sites were proposed before the enactment of HSWA and met all of the NPL eligibility requirements at the time they were proposed, including the RCRA listing policy then in effect. The expanded RCRA Subtitle C corrective action authorities established by HSWA did not apply at the time of the proposals; thus, CERCLA appeared to be the only authority that could effectuate remedial action if it were necessary. Based on the conditions at those two sites, EPA found it appropriate to begin the remedial planning process. The owners or operators of these sites were offered the opportunity to undertake the remedial planning activities themselves but did not agree to do so. At one site, the owner/operator also declined to pay for other response activities that EPA advised the owner/operator were appropriate to mitigate threats to public health and the environment.

The Agency's final and proposed RCRA listing policy announced today is based in part on the conclusion that RCRA sites should be placed on the NPL if their owners or operators exhibit an unwillingness or inability to undertake corrective action. At these two sites, the Agency has concluded that the owner/operators' unwillingness to undertake remedial planning and/or removal activities is an indication that the owners or operators would also be unwilling to undertake remedial actions if they are required. Therefore, the rationale for placing them on the NPL now is the same rationale that underlies the basic policy announced today. Consequently, the Agency has concluded that listing these two sites at this time is appropriate.

As explained below, the Agency will continue to develop more precise criteria which identify those RCRA sites which should be listed on the NPL based upon the owner/operators' unwillingness to undertake corrective action. Until those criteria are delineated more clearly, the Agency believes it appropriate to place or retain sites on the NPL on a case-by-case basis. This is particularly true for sites where CERCLA-financed activities are now in progress, since developing more precise criteria to determine unwillingness may take a substantial period of time.

Once a complete, final RCRA listing policy is developed, this component of the RCRA policy will be withdrawn. Sites will be addressed under RCRA in the first instance unless they fit within one of the exception categories that are included in the complete final policy.

#### C. Components of Proposed RCRA Policy



In addition to the circumstances identified in the final portion of the RCRA listing policy, there are other situations for which the exercise of RCRA authorities may not result in expeditious or adequate remedial action and, therefore, NPL eligibility should also be considered. For example, even though an owner/operator is not bankrupt or has not lost authorization to operate, he may have failed to comply sufficiently with a permit condition or an order issued pursuant to RCRA authorities or may not have adequately closed a facility in accordance with an approved closure plan. The Agency is considering providing more specificity to the third component of today's policy by proposing in a separate notice of today's **Federal Register** that sites falling into the categories below would be eligible for the NPL.

1. *Facilities whose owners or operators have not complied adequately with an administrative order, judicial action, or a RCRA permit condition requiring response or corrective action.* As a general matter, the Agency would prefer to use RCRA permit or enforcement authorities to secure corrective actions at RCRA sites. When a facility owner fails to adequately carry out corrective action activities, there is little assurance that releases will be addressed in an appropriate manner. Such facilities should be eligible for listing in order to make CERCLA authorities available expeditiously. Although the Agency has not previously taken into account compliance with corrective action requirements in a permit or a federal enforcement action when considering a site for listing, Congress deliberately expanded the scope of the RCRA corrective action authorities. Accordingly, it is appropriate for the Agency to rely on these authorities. When an owner/operator fails to comply adequately with a RCRA corrective action requirement, however, it means that CERCLA remedial action may be needed to protect human health and the environment. By making these facilities eligible for listing, the Agency provides that appropriate CERCLA-financed remedial action can occur expeditiously.
2. *Facilities whose owners or operators have not submitted or implemented an adequate closure plan.* Adequate closure of a RCRA facility is integrally related to prevention of future releases and often involves measures similar to those undertaken during corrective action, such as waste removal, excavation of contaminated soil and capping. Similarly, where an owner or operator is unwilling to carry out such activities there is a need to ensure that CERCLA will be available.

If the Agency decides to incorporate into the final RCRA listing policy a component that allows listing of sites in the two categories described above, an important issue will be how the Agency establishes that there has not been adequate compliance with RCRA requirements relating to corrective action or closure. If non-compliance is established through a determination by an administrative law judge or a court, there may be delays in employing CERCLA to respond to problems at these sites. It may be more appropriate, therefore, for the Agency to base its decision to list sites on the NPL under this criterion based upon the issuance of an administrative order or initiation of a judicial action to enforce corrective action requirements imposed by permit or order or in a closure plan. In a separate notice in today's **Federal Register**, the Agency specifically solicits comments on how and when it should determine that the likelihood of compliance with RCRA requirements is low enough that a RCRA site should be eligible for the NPL.

As explained above, the components of the Agency's policy with respect to sites that may be subject to RCRA corrective action are designed to ensure that RCRA authorities are employed first except where there are indications that an owner or operator is unwilling or unable to perform corrective action. The Agency has identified three categories of sites for which there are indications of unwillingness or inability to carry out corrective action and has announced that facilities in those categories will be eligible for the NPL. EPA may not have identified all types of sites for which the exercise of RCRA authorities may not result in timely and appropriate remedial action and invites commenters, in a separate notice in today's **Federal Register**, to suggest other categories of RCRA sites that should be considered eligible for the NPL. For example, additional categories that may merit inclusion are RCRA facilities whose owners or operators did not notify the appropriate authority that they treat, store, or dispose of RCRA Subtitle C hazardous waste or did not submit the required permit applications or who have otherwise indicated an unwillingness to undertake corrective action.

The Agency will consider supplementing the RCRA listing policy announced today if comments or the Agency's experience with the new policy demonstrate that additional categories of RCRA-related sites should be placed on the NPL to ensure appropriate and expeditious remedial action.

#### D. Application of the Final RCRA Policy to Currently Proposed Sites

The Agency is promulgating six RCRA sites today. These six sites fall within the scope of the final policy defining NPL-eligible RCRA sites. Four of the six sites are bankrupt and two sites, proposed prior to HSWA, meet the third criterion of the RCRA policy as explained above. The RCRA-related sites promulgated in this final rule are:

**Bankrupt Sites:**

- Interstate Lead Co. (ILCO), Inc., Leeds, Alabama
- Thermo-Chem, Inc., Muskegon, Michigan
- Whitmoyer Laboratories, Jackson Township, Pennsylvania
- American Creosote Works, Inc. (Jackson Plant), Jackson, Tennessee

**Sites deemed unwilling to perform remedial action:**

- Operating Industries, Inc., Landfill, Monterey Park, California
- L.A. Clarke & Son, Spotsylvania County, Virginia

The L.A. Clarke & Son site also appears to qualify under the second component of the final listing policy.

The remainder of the RCRA-related sites proposed in October 1984 will remain in proposed status until the Agency evaluates their RCRA status in order to determine whether they are eligible for the NPL based on this new policy. Elsewhere in today's **Federal Register**, in the notice describing the proposed components of the RCRA policy, EPA invites the owner/operators of the remaining 31 proposed facilities, and any other persons, to provide any information that would assist EPA in evaluating:

1. The facility's status under RCRA and
2. the relationship this information has to the final and proposed elements of the new RCRA policy discussed above.

**E. Application of Policy to Final NPL Sites**

The Agency plans to review the status of and apply this policy to RCRA sites that are already listed on the final NPL. NPL sites that are not subject to Subtitle C corrective action requirements or RCRA facilities that are eligible for the NPL based on the final or proposed policy announced today will continue to be listed on the NPL. The remaining sites will be deleted. Elsewhere in today's **Federal Register**, in a notice describing the proposed components of the RCRA policy, the Agency invites the owners or operators of facilities on the proposed or final NPL, or other persons, to provide information that would assist EPA in evaluating:

1. the facility's status under RCRA and
2. the relationship this information has to the final and proposed elements of the new RCRA policy.

**F. Federal Sites**

Application of this policy with respect to Federal facilities will be addressed at a later date. The Agency is working to resolve a number of issues associated with Federal facilities and will coordinate application of this policy with those efforts.

**G. Response to Public Comments on Proposed Policy for RCRA-Related Sites**

On April 10, 1985, (50 FR 14110), the Agency proposed a policy for deferring listing of RCRA sites and for deletion from the NPL of RCRA sites currently proposed or promulgated on the NPL. The policy proposed at that time is summarized elsewhere in this preamble. The Agency received a number of comments on the April 1985 proposal and on the reiteration of the proposal in the September 1985 preamble to NPL Update #4. These comments can be summarized as falling within five broad categories:

- Support for the proposed policy
- Concern about flexibility in the proposed policy
- Suggested revisions to the proposed criteria for deferring the listing of RCRA facilities
- Revisions to the proposed criteria for deleting RCRA facilities from the NPL

- Suggested need for greater flexibility in dealing with sites under RCRA

Responses to the significant comments on the policy are presented below.

1. *Support for proposed policy.* All but two commenters specifically stated that they supported the policy proposed by the Agency, and the other two comments generally were favorable. (One raised a technical issue about the proposed deletion criteria; the other stated that, while the proposed policy was reasonable and that there was no objection to it, the Agency needed to retain the flexibility to deal with RCRA sites under CERCLA first when circumstances warranted such an approach).

The commenters presented four basic reasons for supporting the proposed policy:

- Policy better reflects the intent of both CERCLA and HSWA
- Policy preserves the limited CERCLA Trust Fund monies for their intended use
- HSWA eliminates the need for listing most RCRA sites on the NPL
- RCRA authorities provide more effective and efficient means for cleanup of RCRA sites than CERCLA authorities

*Comment:* Commenters stated that they supported the proposed policy because they believed that it reflects the intent of both CERCLA and HSWA. Several commenters asserted that CERCLA was intended to address only those abandoned or inactive sites for which there is no responsible party capable of assuming financial obligations for corrective action. These commenters noted that by deferring NPL listing of RCRA sites, the limited CERCLA Trust Fund monies would be preserved for use at abandoned or inactive sites. Commenters also indicated that deferring listing of RCRA sites would provide an incentive for facility owner/operators to conduct cleanup activities.

*Response:* While the Agency agrees that responsible parties should bear the cost of response activities, the Agency does not agree that CERCLA is intended to address only those abandoned or inactive sites for which there is no responsible party able to assume financial obligation for response costs. CERCLA authority exists regardless of whether responsible parties can be identified. It is appropriate to expend CERCLA funds to respond to releases at RCRA sites where there is a responsible party who is unwilling or unable to undertake response actions. Section 107 of CERCLA specifically provides for the recovery, from responsible parties, of Fund monies spent for response actions in such situations.

Furthermore, the listing of a site on the NPL does not mean that Fund monies will automatically be spent for remedial action or study at that site. In many instances, these activities will still be funded by the responsible party. The Agency agrees, however, that by addressing sites under RCRA that appear likely to be cleaned up adequately through the use of RCRA authorities, more CERCLA funds may be available for sites that cannot be addressed under RCRA. This is one of the purposes of the policy announced today. The Agency also agrees and hopes that today's policy may act as an incentive to owners/operators of RCRA sites to comply with RCRA requirements and, in particular, to take whatever corrective actions are appropriate without the need for the Agency to place their sites on the NPL.

*Comment:* In supporting the proposed policy, a few commenters noted that HSWA effectively eliminates any distinction in RCRA authority with regard to regulated and nonregulated units at a RCRA facility. The commenters indicated that HSWA provides ample authorities to ensure that corrective actions are conducted at facilities having RCRA permits or interim status. As a result, the commenters stated that there was no longer any reason to continue the current NPL policy of listing those RCRA facilities where a significant portion of a release appeared to originate from a nonregulated unit. These commenters indicated that the Agency should first apply its RCRA authorities to these facilities before proceeding under CERCLA.

*Response:* The Agency agrees that there is no longer a reason for distinguishing releases at regulated units from other releases that can be addressed under the expanded HSWA authorities. Today's policy eliminates this distinction.

*Comment:* Some commenters expressed support for the proposed policy because they believed it would be more effective and efficient to use RCRA authorities, rather than CERCLA authorities, to clean up RCRA facilities. They indicated that dealing with RCRA facilities under the RCRA program would avoid duplication of technical review and enforcement efforts under the CERCLA program. This would save time and money for both the Agency and facility owners/operators and ensure that facilities are addressed in a consistent and uniform manner.

One commenter further stated that by deferring the listing of Subtitle C commercial waste management facilities, these facilities would be more likely to remain solvent (and thus pay for their own corrective actions under RCRA) because generators would be more likely to send wastes to them if they were not listed on the NPL. This commenter also indicated that RCRA facilities would be better able to obtain insurance required for continued operation under Subtitle C if they were not listed on the NPL.

*Response:* The Agency agrees that it is generally more desirable to deal with RCRA facilities under RCRA authorities than under CERCLA authorities. This is the intent of the policy announced today. If facilities being deferred from listing do not ultimately have to be addressed under CERCLA, the policy is likely to reduce duplication of effort and save time and resources. Placing a site on the NPL does not impose liability upon anyone or necessarily result in the expenditure of funds for remedial action. It may be the case, however, that some RCRA facilities may derive some incidental benefits from not being placed on the NPL. However, the policy is not designed to protect the financial integrity of the owner/operator; it is designed to provide a frame work for most effectively addressing releases that may affect public health and the environment.

*Comment:* In supporting the proposed policy, one commenter stated that the only advantage of using CERCLA rather than RCRA is public notification through the NPL listing process. The commenter noted that RCRA imposes several public notification requirements. If public listing is deemed absolutely necessary, public listing of RCRA Part B applications receiving priority attention because of ground water problems could be implemented.

*Response:* EPA does not believe, at this time, that it is necessary to publish a separate list of RCRA facilities with ground water problems that are seeking Part B permits. The RCRA regulations now require public notification when new Part B permits are under consideration, when major modifications are proposed to a Part B permit, and when a facility is closing. At that time the affected public is given adequate notice of pending actions that would address releases to all media including ground water. In addition, the Agency will develop a public participation process for interim status corrective action orders.

## 2. *Concern about flexibility in the proposed policy.*

*Comment:* One commenter stated that while the proposed policy was reasonable, the Agency needs to retain some flexibility to address RCRA sites under CERCLA first when that approach would lead to a more expeditious remedy or would allow for a more equitable distribution of costs. The commenter stated that flexibility in the initial choice of authority would:

1. provide more options for site remedies,
2. ensure that the maximum number of parties are involved, and
3. possibly prevent a single company from shouldering an unexpected and inequitable share of cleanup responsibility since previous owners and generators may be drawn in as responsible parties under CERCLA.

*Response:* After examining this issue, the Agency has concluded that, to the extent practicable, it is better to identify in the policy those categories of RCRA facilities that are eligible for the NPL than to determine for each facility whether a release should first be addressed under RCRA or CERCLA. The policy announced today is designed to ensure that RCRA authorities are employed first at facilities that do not fall within the final eligibility categories. The policy allows all interested persons to know whether a particular facility may be considered eligible for NPL listing.

Under today's policy, the Agency foregoes some flexibility in the mechanisms for obtaining site remedies by limiting the use of CERCLA-financed remedial action to certain categories of RCRA sites. However, RCRA affords flexibility comparable to CERCLA for selecting technical remedies for responding to releases. Thus, employing RCRA corrective action authorities is expected to achieve protection of public health and the environment as effectively as remedies achieved under CERCLA. The Agency's goal is to develop RCRA corrective action requirements that remove inconsistencies between remedial actions performed under CERCLA and corrective actions performed under RCRA. Under the National Contingency Plan, the Agency now attempts to make the two programs consistent by having CERCLA actions meet RCRA technical requirements where they are applicable.

With regard to the commenter's concern about the equitable distribution of response costs, in situations where an owner/operator who has performed a response action feels that there are additional responsible parties who should share the response costs, the owner/operator may

seek recovery of these response costs from other parties.

*Comment:* One commenter argued against allowing States the flexibility to decide whether to pursue remedies under CERCLA or RCRA. The commenter indicated that States will choose CERCLA rather than RCRA regulatory authorities if presented a choice, primarily because CERCLA provides funds to a State for its activities while RCRA does not.

*Response:* EPA, not the States, decides which sites are listed on the NPL. Only those sites that meet the eligibility criteria promulgated by EPA may be listed. States may recommend sites for the NPL, but State concurrence is not required for listing. The policy announced today specifies categories of RCRA facilities for which the Agency believes the use of CERCLA authorities is appropriate. CERCLA authorities will be used to address only those RCRA facilities for which the exercise of RCRA authorities is not likely to result in appropriate cleanup activities.

3. *Suggested revisions to proposed criteria for deferring listing of RCRA facilities.* A number of commenters who indicated support for the proposed policy suggested criteria for use in determining when a RCRA facility is to be deferred from listing. The various criteria suggested by these commenters include the following:

- Financial ability of the facility owner/operator to carry out corrective action
- Willingness of the facility owner/operator to carry out corrective action
- Availability of sufficient legal guarantees to ensure that corrective action will be carried out
- Existence of ongoing litigation concerning corrective action at the facility
- Issuance or likelihood of issuance of a Subtitle C permit

For the most part, the commenters did not suggest specific means for evaluating these criteria (e.g., how financial inability would be determined). The criteria suggested by each commenter are discussed below.

*Comment:* One commenter suggested that listing should be deferred for sites meeting all of the following criteria:

- The owner/operator is a permittee or operator of an interim status site subject to the jurisdiction of RCRA,
- The owner/operator has admitted responsibility for performance of any needed corrective action at the facility,
- The owner/operator is not presently subject to any proceedings in bankruptcy, and
- The owner/operator is willing to agree to perform analytical work or remedial action pursuant to the applicable RCRA enforcement provisions and the enter into a consent decree with the appropriate agency upon these terms.

*Response:* The Agency believes that the policy announced today essentially incorporates the basic ideas suggested by this commenter: that where the owner/operator is not bankrupt and exhibits a willingness to undertake necessary response action, the facility should be deferred from listing on the NPL. However, it may not be desirable for the Agency to always defer listing a site at which an owner/operator has entered into an agreement to perform appropriate studies or remedial action. For example, the RCRA listing policy proposed elsewhere in today's **Federal Register** would address situations in which an owner/operator who may have entered into a consent agreement fails to comply adequately with its terms.

*Comment:* Another commenter stated that the proposed policy was more stringent than necessary and stated that deferral of NPL listing and deletion of proposed or promulgated sites from the NPL should occur if the site meets all of the following criteria:

- The facility has completed its Part B permit application,
- The Part B permit application, the permit itself if issued, or other relevant administrative or judicial consent decree addresses the releases which are the subject of the HRS score that led to eligibility for NPL listing in the first instance, and

- There is sufficient legal guarantee, by way of court order and/or enforceable permit terms and conditions, which assures that the releases to be addressed will in fact be addressed, and there is adequate financial assurance that the costs of such actions are within the means of the facility.

*Response:* The Agency believes that the final policy announced today incorporates some elements suggested by this commenter. The Agency, like the commenter, is concerned about the sufficiency of legal guarantees and the adequacy of financial assurances for corrective action. Pursuant to HSWA, the Agency is developing regulations under which facilities seeking RCRA permits will be required to demonstrate financial responsibility for corrective action.

The Agency does not, however, agree with the commenter's suggestion that only facilities that have completed RCRA Part B permit applications should be deferred from NPL listing. Pursuant to Section 3008(h) of RCRA, the Agency has the authority to require corrective action at interim status facilities. Interim status facilities that have not completed Part B permit applications should thus be deferred, like any other RCRA facility, unless the site falls within the categories of sites that are eligible for NPL listing under today's final and proposed policy. Facilities that have lost interim status under RCRA sections 3005(c), 3005(e), or 3008(h) are eligible for the NPL under the second component of today's final policy.

*Comment:* One other commenter stated that RCRA sites that are currently in litigation should not be placed on the NPL after a civil suit has been started. The commenter noted that NPL listing could be interpreted as an effort to influence the outcome of the case. The commenter indicated that listing is unnecessary in such cases because action is already taking place and the litigation serves the NPL purpose of identifying sites requiring action.

*Response:* The Agency does not agree that NPL listing would influence the outcome of litigation. As has been explained repeatedly in preambles to NPL rulemakings, the NPL is primarily an informational tool for use by the Agency in identifying sites that appear to present a significant risk to public health or the environment. Placing a site on the NPL is not intended to influence litigation over candidate sites. Rather, NPL listing is intended to guide the Agency in determining which sites warrant further investigation and consideration for Fund-financed response. Inclusion of a site on the NPL does not establish that the Agency necessarily will undertake response action, does not in itself reflect a judgment of the adequacy of the activities of any person, does not require any person to undertake any action, nor does it assign any liability to any person.

Furthermore, the Agency does not agree that listing is unnecessary for all sites that are in litigation. In those situations where the circumstances at the site which gave rise to the litigation reflect an unwillingness of an owner/operator to undertake necessary response activities, the Agency believes it may be appropriate to place the site on the NPL. The policy announced today reflects the Agency's concern about such situations. The second component of today's final policy considers the compliance history of sites that have lost interim status. On-going litigation would not prevent a site from being listed under this component of the policy if the criteria are met. The proposed policy announced elsewhere in today's **Federal Register** considers the adequacy of compliance in other situations, many of which will involve ongoing litigation.

*Comment:* Another commenter expressed support for deferring the NPL listing of RCRA facilities until it can be proven that corrective action would not be adequate under RCRA Subtitle C permit provisions, RCRA section 7003 imminent hazard provisions or CERCLA Section 106 abatement action provisions.

*Response:* Under the proposed component of the policy announced today, the Agency would place on the NPL, sites at which the owner/operators were not complying with RCRA Subtitle C permit conditions or with orders or judicial actions requiring corrective action. The Agency does not agree that inadequate compliance with corrective action requirements of permits, RCRA section 7003 orders or CERCLA section 106 orders should be the only basis for NPL listing of RCRA sites. Today's announcement describes other criteria to be used by the Agency for listing RCRA sites and the rationale for their inclusion in the policy.

*Comment:* One other commenter indicated that CERCLA should apply to RCRA facilities only in those situations which represent an imminent and substantial danger or where there are no responsible parties in a position to assume financial obligations.

*Response:* Reasons for not limiting today's policy to situations where there are no responsible parties capable of assuming financial obligations have previously been discussed. The Agency also does not agree that CERCLA should be employed at RCRA facilities only in situations which represent an imminent and substantial danger. Section 104 of CERCLA provides

response authorities for situations in which there is a release which may not present an imminent and substantial danger to public health or welfare. It would be appropriate to take CERCLA action at RCRA facilities that are eligible for the NPL under today's policy, but at which imminent and substantial endangerment has not been demonstrated.

*Comment:* Another commenter supported the concept that sites that could be covered under other statutes, especially RCRA, need not and should not be listed on the NPL.

*Response:* As is discussed above, there are some RCRA sites that the Agency believes should be listed on the NPL. Some statutes administered by Agencies other than EPA provide authorities that can be used to effect remedial action at certain types of sites that can also be addressed under CERCLA. The Agency's current policies with respect to such sites have been discussed in previous NPL rulemakings. If changes in these policies are considered, public comments will be solicited at that time.

4. *Suggested revisions to proposed criteria for deleting RCRA facilities from the NPL.* Two commenters raised issues about the policy proposed for determining whether RCRA facilities currently proposed for or promulgated on the NPL should be deleted from the NPL.

*Comment:* One commenter supported the proposed criteria, but indicated that the Agency needs to explicitly state that RCRA sites will not be deleted from the NPL if remedial investigation/feasibility studies, remedial designs, remedial actions, or other similar actions have been initiated or implemented at the NPL site. The commenter indicated that this provision should apply to both Fund-finances activities as well as voluntary activities being conducted by responsible parties.

*Response:* As discussed elsewhere in this preamble, two RCRA-related sites at which there is ongoing Fund-financed remedial planning are today being listed on the NPL under the second component of the final RCRA listing policy.

The Agency does not, however, believe that there is any reason to retain on the NPL those RCRA sites at which voluntary (non-Fund-financed) activities are being conducted by responsible parties since the voluntary action indicates a willingness by these parties to undertake necessary response actions under RCRA. If these response actions are not adequately carried out, then these facilities would become eligible for NPL listing if the proposed components of today's policy, announced elsewhere in today's **Federal Register**, are adopted.

*Comment:* Another commenter indicated that the two criteria proposed for deleting sites from the NPL were more stringent than the criteria proposed for deferral of NPL listing. The commenter indicated that the criteria for deletion should be identical to the criteria for deferring NPL listing, except in those instances where some current obligations of the Fund, or the legal ability of the Fund to recover monies expended, may be adversely affected.

*Response:* The final and proposed components of the RCRA sites policy announced today that will be used in deleting RCRA sites from the NPL are identical to those components that will be used in deferring RCRA sites from NPL listing.

5. *Suggested need for greater flexibility in dealing with sites under RCRA.*

*Comment:* Two commenters supporting the policy proposal noted that in applying the policy, for those sites shifted to administration under RCRA rather than CERCLA, the Agency needs to retain flexibility in the remedial action standards being applied by the RCRA program to the different units at these sites. They stated that different standards needed to be applied to new or active RCRA units, inactive hazardous waste management units, and solid waste management units. One commenter indicated that RCRA standards should not be applied retroactively to pre-RCRA waste management units. The other stated that flexible, efficient, and cost-effective remedial responses should be applied to site-specific conditions at inactive units or solid waste management units rather than requiring these units to comply with standards applicable to new hazardous waste management units. Sections 3004(o) and 3005(j) of HSWA were cited as justification for distinguishing requirements at new and existing facilities, and Sections 4001 through 4010 were cited as justification for distinguishing among hazardous and non-hazardous waste management units.

One other commenter stated that by having RCRA-related facilities handled entirely through RCRA, artificial distinctions among releases based on the status of a solid waste management unit may be eliminated. The commenter noted that pollution conditions do not respect distinctions in time or place. The commenter indicated that it is far better from a legal, administrative, and technical perspective for an entire facility and all releases and potential

releases from the facility to be dealt with in a uniform manner and by a single review.

*Response:* The Agency does not believe that these issues are relevant to listing of sites on the NPL. These issues are, however, relevant to the implementation of the RCRA corrective action program and are being considered in deliberations on the development of the corrective action program. These will be addressed when the Agency issues regulations and/or guidance on the implementation of the corrective action program.

### **Releases of Mining Wastes**

The Agency's position, as discussed in the preamble to previous final NPL rulemakings (48 FR 40658, September 8, 1983; 49 FR 37070, September 21, 1984) is that mining wastes may be hazardous substances, pollutants or contaminants under CERCLA and, therefore, are eligible for listing on the NPL. This position was affirmed in 1985 by the United States Court of Appeals for the District of Columbia Circuit (*Eagle-Picher Industries, Inc. v. EPA*, 759 F. 2d 905, D.C. Cir. 1985).

In the past, EPA has included mining waste sites on the NPL. Eight mining sites were included in the October 15, 1984, Update #2 proposal. In subsequent proposals, however, EPA has considered whether mining sites could be addressed satisfactorily under the Surface Mining Control and Reclamation Act of 1977 (SMCRA) before deciding whether to place them on the NPL. EPA has initiated discussions with the U.S. Department of the Interior (DOI) to determine if DOI or the State could take appropriate action under SMCRA to protect public health and the environment at these sites.

EPA is including six of the eight mining sites that were proposed for Update #2 in today's rulemaking. Four of these sites are being placed on the NPL because they are non-coal sites with mining operations that occurred after the enactment date of SMCRA (August 3, 1977); therefore these sites are neither regulated by SMCRA nor eligible for reclamation funds from the SMCRA Abandoned Mine Land Reclamation (AMLR) Program. These sites are:

- Eagle Mine, Minturn/Redcliff, Colorado
- Smuggler Mountain, Pitkin County, Colorado
- Uravan Uranium Project (Union Carbide Corp.), Uravan, Colorado
- Silver Mountain Mine, Loomis, Washington

One site Torch Lake, Houghton County, Michigan, is being placed on the NPL because the State of Michigan does not have an approved SMCRA program and, consequently, the site is not eligible for reclamation funds from the SMCRA AMLR program.

The Mayflower Tailings Site in Wasatch County, Utah, will not be placed on the NPL at this time because, in response to public comments, its HRS score dropped below 28.50. This site is discussed in more detail in the "Support Document for the Revised National Priorities List - 1986."

The remaining two mining sites proposed in Update #2 - Olson/Neihart Reservoir, Wasatch County, Utah and Sharon Steel (Midvale Tailings), Midvale, Utah - ceased mining before the enactment date of SMCRA and therefore may be eligible for reclamation funds under SMCRA. Until EPA explores this issue further, these sites remain in proposed status. EPA will announce in a future NPL rulemaking what relationship SMCRA activities will have to NPL listing decisions.

A number of comments were received on the proposal of these mining sites in Update #2. One commenter stated that Congress recognized the unique characteristics of mining wastes and expressly excluded mining wastes from EPA's regulatory authority under RCRA and CERCLA.

EPA disagrees with the commenter. The *Eagle-Picher* decision has affirmed the Agency's decision that mining wastes may be "hazardous substances, pollutants or contaminants" under CERCLA.

Several commenters stated that the HRS is biased against high-volume, low-hazard wastes, such as mining wastes. The commenter said EPA is unable to provide the evidence required by law that the HRS is a rational basis on which to rank mining sites for inclusion on the NPL.

The issue of bias against mining wastes has been raised by commenters in previous NPL rulemakings, and EPA's responses can be found in the preambles to these rulemakings (48 FR 40663, September 8, 1983; and 49 FR 37075, September 21, 1984). Specifically, EPA believes that there is ample evidence that the concentrations and amounts of pollutants and contaminants discharged by mining sites can and do pose a significant threat to public health and the environment. Mining sites tend to generate extremely large quantities of wastes. Thus, even though the



concentration of hazardous substances in mining waste may be low, the total quantities of hazardous substances available to be discharged into the environment are often large. Furthermore, the waste-quantity factor in the HRS is only one factor, and is generally not as important as population, toxicity, and likelihood of a release. This relatively low emphasis on waste quantity reflects the fact that the HRS was designed to score a wide variety of releases and potential releases of hazardous substances, including mining sites.

Another commenter stated that the proposed listing of mining sites violates the Constitutional prohibition against ex post facto regulation and denies mining companies the due process protection of property rights guaranteed by the Fifth Amendment to the Constitution. The commenter also stated that listing mining sites on the NPL violates Executive Order 12291 by failing to consider the tremendous costs to the mining industry.

The Agency believes that the commenter's arguments are groundless. Placing a site on the NPL does not deprive any property owner of property, nor does it create liability or impose any costs. Listing on the NPL does not establish that EPA will necessarily undertake response action, nor does it require any action by any private party or determine liability for site response costs. Costs that arise out of site responses result from site-by-site decisions about what actions to take, not from the act of listing itself.

#### ***Releases of Pesticides Registered Under the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA)***

The proposal of NPL Update #2 (49 FR 40320, October 15, 1984) included six sites in South Central Oahu, Hawaii, where parts of the basal aquifer have been contaminated by pesticides, including ethylene dibromide (EDB), dibromochloropropane (DBCP), and trichloropropane (TCP), a likely contaminant of the pesticide D-D (which contains 1,2-dichloropropane, 1,3-dichloropropene and related C3 compounds). These six sites were the first sites proposed for the NPL on the basis of releases which appear to originate entirely from the application of pesticides registered under FIFRA.

The Agency has received numerous comments on the listing of the Hawaii pesticide sites. The Agency is continuing to evaluate these sites in the context of an overall policy with respect to sites at which contamination results from the application of FIFRA-registered pesticides. Therefore, the Agency has not reached a final decision on listing of these six sites on the NPL and is deferring final rulemaking on these sites at this time.

#### ***Releases of Radioactive Materials***

Section 101(22) of CERCLA excludes several types of releases of radioactive materials from the statutory definition of "release." These releases are therefore not eligible for CERCLA response actions or inclusion on the NPL. As a policy matter, EPA has also chosen not to list releases of source, by-product, or special nuclear material from any facility with a current license issued by the Nuclear Regulatory Commission (NRC), on the grounds that the NRC has full authority to require cleanup of releases from such facilities. Formerly licensed facilities whose licenses no longer are in effect will, however, be considered for listing.

These exclusions and policies are discussed in the preambles to previous NPL rulemakings (47 FR 58477, December 30, 1982; 48 FR 40661, September 8, 1983; and 49 FR 37074, September 21, 1984) and remain the same.

Four sites containing radioactive waste are being placed on the NPL in today's rulemaking. One site - the Lodi Municipal Well in Lodi, New Jersey - will remain in proposed status while EPA evaluates additional technical information.

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### **V. Generic HRS Issues**

The Agency received a total of 607 comments on proposed NPL Update # 2. Of these, 543 comments pertained to 126 of the proposed sites, including the 36 Federal facility sites. The remainder of the comments addressed sites that were not proposed, or were generic or technical issues that were not site-specific. Comments regarding specific sites are addressed in the "Support Document for the Revised National Priorities List - 1986".

Many commenters raised issues that have been raised in previous NPL rulemakings. These issues are discussed in the preambles to previous rulemakings (48 FR 40658, September 8, 1983; 49 FR 37070, September 21, 1984). The Agency's position on these issues remains unchanged. Many of these comments criticized the HRS. Since the HRS was promulgated as a final rule in July 1982 (47

FR 31219), these comments cannot affect the scoring of the sites proposed in October 1984.

EPA's responses to public comments on generic HRS issues are presented in this section of the preamble.

### ***Waste Quantity***

A number of commenters said that the waste quantity values assigned under the HRS were too high because EPA had included the nonhazardous constituents of the hazardous substances in calculating the quantity of waste located at the facility. Commenters raised similar issues in previous final NPL rulemakings and EPA's response remains unchanged (48 FR 40664, September 8, 1983; 49 FR 37077, September 21, 1984).

### ***Consideration of Flow Gradients***

Several commenters argued that EPA should consider hydrogeologic information on the direction of groundwater flow when assigning an HRS score to population served by ground water. As was the case with the waste quantity issue, this issue was addressed in previous NPL rulemakings (48 FR 40664, September 8, 1983; 49 FR 37077, September 21, 1984). The rationale for the Agency's approach is further discussed in the preamble to the NCP (47 FR 31190, July 16, 1982) and is equally applicable now.

### ***Scoring on the Basis of Current Conditions***

Many commenters stated that EPA should take current conditions into account when scoring a site where response actions have reduced the hazards posed by the site. In response, EPA computes HRS scores and lists sites on the basis of conditions existing before any response actions are taken in order to represent the full scope of the original problem presented by a site. This policy was explained in the preamble to the final revisions to the NCP (47 FR 31187, July 16, 1982), and in previous NPL rulemakings (48 FR 40664, September 8, 1983; 49 FR 37078, September 21, 1984). The Agency's position remains unchanged.

### ***Small Observed Release***

Some commenters maintained that EPA should not assign a value for an observed release to ground water when the concentration of contaminant is below the regulatory limits specified under the Safe Drinking Water Act or other Federal and State laws. Similar comments were raised in previous final NPL rulemakings (48 FR 40665, September 8, 1983; 49 FR 37078, September 21, 1984), and EPA's response remains unchanged. The HRS does not define the chemicals of concern to be only those which meet or exceed a State's primary or secondary drinking water standards. An observed release is considered to have occurred if contaminants are detected at levels significantly above background levels.

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## **VI. Disposition of Proposed Sites**

Of the 244 sites proposed for the NPL on October 15, 1984, two New Jersey sites - the Glen Ridge Radium Site and the Montclair/West Orange Radium Site - were promulgated in a separate rulemaking on February 14, 1985 (50 FR 6320). On September 21, 1984 (49 FR 37070), EPA deferred rulemaking on four sites originally proposed in the first update to the NPL (48 FR 40674, September 8, 1983). EPA has thoroughly reviewed the comments received on these 246 proposed sites and its decisions on the status of these sites are discussed in this section.

In addition to the 246 sites proposed in September 1983, and October 1984, EPA is including in today's rulemaking 7 sites from NPL Update # 3 (50 FR 14115, April 10, 1985) and 13 sites from NPL Update # 4 (50 FR 37950, September 18, 1985) that did not receive public comments. The inclusion of these 20 sites brings the number of sites discussed in today's rulemaking to 266. Of these sites, 170 are being added to the final NPL. EPA has not made a decision on 88 sites (including the 36 Federal facility sites and the 31 RCRA-related sites), and these sites will continue to be proposed. One site was repropoed on September 18, 1985, as part of NPL Update # 4 (50 FR 37950). Final scores for seven sites have dropped below 28.50 and will not be included on the NPL at this time.

### ***Final Sites With HRS Score Changes***

For 18 of the 170 sites promulgated today, EPA has revised the HRS scores based on its review of comments and additional information. Although these changes have no effect on listing, some of the changes have resulted in the sites being placed in different groups of 50 sites. These sites are

presented in Table 1.

**Table 1**  
**Final Sites With HRS Score Changes**

State and Site Name	City	HRS Score Proposed	HRS Score Final
California: Operating Industries, Inc., Landfill Intel Corp. (Mountain View Plant) Raytheon Corp	Monterey Park Mountain View Mountain View	47.91 31.94 37.93	57.22 29.76 28.76
Colorado: Smuggler Mountain	Pitkin County	44.78	31.31
Illinois: Pagel's Pit	Rockland	42.47	45.91
Indiana: International Minerals & Chemicals Corp. (Terre Haute East Plant)	Terre Haute	48.91	57.80
Minnesota: Agate Lake Scrapyard Kummer Sanitary Landfill Olmsted County Sanitary Landfill	Fairview Township Bemidji Oronoco	31.24 42.37 33.62	29.68 35.57 40.70
New York: BEC Trucking Hooker Chemical/Ruco Polymer Corp	Vestal Hicksville	30.76 48.01	30.75 41.60
North Carolina: North Carolina State University (Lot #86, Farm Unit # 1)	Raleigh	51.93	48.36
Ohio: AlSCO Anaconda Industrial Excess Landfill Sanitary Landfill Co. (Industrial Waste Disposal Co., Inc.)	Gnadenhutten Uniontown Dayton	48.67 57.80 31.94	42.94 51.13 35.57
Pennsylvania: Westinghouse Elevator Co. Plant	Cumberland Township	36.38	36.37
Wisconsin: National Presto Industries, Inc. Stoughton City Landfill	Eau Claire Stoughton	38.54 32.45	42.39 35.79

#### **Previously Proposed Sites**

On September 21, 1984, EPA deferred rulemaking on four sites (Olin Corp. - Areas 1, 2, & 4, Augusta, Georgia; Sand Springs Petrochemical Complex, Sand Springs, Oklahoma; Pig Road, New Waverly, Texas; and Quail Run Mobile Manor, Gray Summit, Missouri) that had been included in the first proposed update to the NPL (48 FR 40674, September 8, 1983).

EPA determined in the promulgation of the first Update (49 FR 37070, September 21, 1984) that the HRS scoring documents on which the proposed rulemaking for the Olin Corp. Site and the Sand Springs Petrochemical Complex Site was based were not in the public docket and were not available to the public during the 60-day comment period for that proposed rule. Therefore, EPA allowed further comment on these sites for a period of 60 days following publication of the final rule. Interested parties were given the opportunity to inspect the HRS scoring documents for these two sites.

During the comment period, EPA received additional comments on the Olin Corp. (Areas 1, 2 & 4) Site. However, the Agency is continuing this site in proposed status because it is an RCRA-related

site that may be deferred under the revised RCRA-related site listing policy.

No additional comments were received on the Sand Springs Petrochemical Site after the proper HRS documents were placed into the docket for public review. Therefore, the HRS score remains the same, and this site is included in today's final rulemaking. Disposition of the two remaining sites in the September 1983 proposal will be discussed later in this section.

#### **Sites With Scores Below 28.50**

In evaluating the comments received in response to the proposal of NPL Update #2 (49 FR 40320, October 15, 1984), the Agency revised the proposed HRS scores for seven sites. The final HRS scores for these sites are now below the cut-off score of 28.50 and will not be included on the NPL. A summary of the comments and EPA's response are recorded in the "Support Document for the Revised National Priorities List - 1986." These sites are listed in Table 2.

**Table 2**  
**Sites Dropped From Consideration (Scores Below 28.50)**

#### *State, Site Name, and City*

California: Precision Monolithic, Inc. - Santa Clara  
Florida: Davidson Lumber Co. - South Miami  
Michigan: Lenawee Disposal Service, Inc., Landfill - Adrian  
New Jersey: Jame Fine Chemical - Bound Brook  
Texas: Pig Road - New Waverly  
Utah: Mayflower Mountain Tailings Pond - Wasatch  
Washington: Quendall Terminal - Renton

#### **Reproposed Sites**

One site - the Pratt & Whitney Aircraft/United Technologies Corp. Site in West Palm Beach, Florida - has been repropoed for the NPL. The site was originally proposed for the NPL on October 15, 1984 (40 FR 40320). The Agency repropoed the site on September 18, 1985 (50 FR 37950), and solicited comments on a completely revised HRS score. The Agency is considering comments received on this site and will make a decision whether to include it on the NPL in a future rulemaking.

#### **Sites Still Under Consideration**

The Agency has not made a final decision for 88 sites, including 36 Federal facilities sites and 31 RCRA-related sites (Table 3); eighty-three of these sites will continue to be proposed. The basis for continuing the proposal of these sites is explained below or in section IV of the eligibility policies. In a separate notice in today's **Federal Register**, EPA is soliciting further comments on five sites.

**Table 3**  
**Sites Still Under Consideration**

#### *Category Site Name, and Location*

Proposed Sites: Comment Period Not Extended

#### **Federal Facilities:**

Alabama Army Ammunition Plant - Childersburg, Alabama  
Anniston Army Depot (Southeast Industrial Area) - Anniston, Alabama  
Castle Air Force Base - Merced, California  
Lawrence Livermore National Laboratory (USDOE) - Livermore, California  
Mather Air Force Base (AC&W Disposal Site) - Sacramento, California  
McClellan Air Force Base (Ground Water Contamination) - Sacramento, California.  
Norton Air Force Base - San Bernardino, California  
Sacramento Army Depot - Sacramento, California  
Sharpe Army Depot - Lathrop, California  
Rocky Flats Plant (USDOE) - Golden, Colorado  
Rocky Mountain Arsenal - Adams County, Colorado  
Dover Air Force Base - Dover, Delaware  
Robins Air Force Base - Houston County, Georgia  
Joliet Army Ammunition Plant (Manufacturing Area) - Joliet, Illinois  
Sangamo Electric Dump/Crab Orchard National Wildlife Refuge (USDOI) - Carterville, Illinois  
Savanna Army Depot Activity - Savanna, Illinois  
Louisiana Army Ammunition Plant - Doyline, Louisiana

Brunswick Naval Air Station - Brunswick, Maine  
 Lake City Army Ammunition Plant (Northwest Lagoon) - Independence, Missouri  
 Weldon Spring Quarry (USDOE/Army) - St. Charles County, Missouri  
 Cornhusker Army Ammunition Plant - Hall County, Nebraska  
 Fort Dix (Landfill Site) - Burlington County, New Jersey  
 Naval Weapons Station Earle (Site A) - Colts Neck, New Jersey  
 Griffiss Air Force Base - Rome, New York  
 Umatilla Army Depot (Lagoons) - Hermiston, Oregon  
 Letterkenny Army Depot (Southeast Area) - Chambersburg, Pennsylvania  
 Milan Army Ammunition Plant - Milan, Tennessee  
 Air Force Plant #4 (General Dynamics) - Fort Worth, Texas  
 Lone Star Army Ammunition Plant - Texarkana, Texas  
 Hill Air Force Base - Ogden, Utah  
 Ogden Defense Depot - Ogden, Utah  
 Tooele Army Depot (North Area) - Tooele, Utah  
 Defense General Supply Center - Chesterfield County, Virginia  
 Bangor Ordnance Disposal - Bremerton, Washington  
 Fort Lewis (Landfill #5) - Tacoma, Washington  
 McChord Air Force Base (Wash Rack/Treatment Area) - Tacoma, Washington

*Pesticide - Application Sites:*

Kunia Wells I - Oahu, Hawaii  
 Kunia Wells II - Oahu, Hawaii  
 Mililani Wells - Oahu, Hawaii  
 Waiawa Shaft - Oahu, Hawaii  
 Waipahu Wells - Oahu, Hawaii  
 Waipio Heights Wells II - Oahu, Hawaii

*RCRA - Related Sites:*

Motorola, Inc. (52nd Street Plant) - Phoenix, Arizona  
 Applied Materials - Santa Clara, California  
 Fairchild Camera & Instrument Corp. (Mountain View Plant) - Mountain View, California  
 Fairchild Camera & Instrument Corp. (South San Jose Plant) - South San Jose, California  
 FMC Corp. (Fresno Plant) - Fresno, California  
 Hewlett-Packard - Palo Alto, California  
 IBM Corp. (San Jose Plant) - San Jose, California  
 Lorentz Barrel & Drum Co. - San Jose, California  
 Marley Cooling Tower Co. - Stockton, California  
 Monolithic Memories, Inc. - Sunnyvale, California  
 National Semiconductor Corp. - Santa Clara, California  
 Rhone-Poulenc, Inc./Zoecon Corp. - East Palo Alto, California  
 Signetics, Inc. - Sunnyvale, California  
 Southern Pacific Transportation Co. - Roseville, California  
 Teledyne Semiconductor - Mountain View, California  
 Van Waters & Rogers, Inc. - San Jose, California  
 City Industries, Inc. - Orlando, Florida  
 Olin Corp (Areas 1, 2 & 4) - Augusta, Georgia  
 Sheffield (U.S. Ecology, Inc.) - Sheffield, Illinois  
 Chemplex Co. - Clinton/Camanche, Iowa  
 U.S. Nameplate Co. - Mount Vernon, Iowa  
 National Industrial Environmental Services - Furley, Kansas  
 E.I. DuPont de Nemours & Co., Inc. (Montague Plant) - Montague, Michigan  
 Lacks Industries, Inc. - Grand Rapids, Michigan  
 Findett Corp. - St. Charles, Missouri  
 Burlington Northern Railroad (Somers Tie-Treating Plant) - Somers, Montana  
 Lindsay Manufacturing Co. - Lindsay, Nebraska  
 General Electric Co. (Coshocton Plant) - Coshocton, Ohio  
 Culpeper Wood Preservers, Inc., - Culpeper County, Virginia  
 IBM Corp. (Manassas Plant Spill) - Manassas, Virginia  
 Mobay Chemical Corp. (New Martinsville Plant) - New Martinsville, West Virginia

*Mining Waste Sites:*

Olson/Neihart Reservoir - Wasatch County, Utah  
 Sharon Steel Corp. (Midvale Tailings) - Midvale, Utah

*Other Sites:*

J.H. Baxter Co. - Weed, California  
 Montrose Chemical Corp. - Torrance, California  
 Montco Research Products, Inc. - Hollister, Florida  
 Michigan Disposal Service (Cork Street Landfill) - Kalamazoo, Michigan  
 Quail Run Mobile Manor - Gray Summit, Missouri  
 Lodi Municipal Well - Lodi, New Jersey  
 Brio Refining Co., Inc. - Friendswood, Texas  
 Sol Lynn/Industrial Transformers - Houston, Texas

#### Proposed Sites: Comment Period Extended

Firestone Tire & Rubber Co. (Salinas Plant) - Salinas, California  
 Kerr-McGee (Kress/Creek/West Branch of DuPage River) - DuPage County, Illinois  
 Kerr-McGee (Reed-Keppler Park) - West Chicago, Illinois  
 Kerr-McGee (Residential Areas) - West Chicago/DuPage County, Illinois  
 Kerr-McGee (Sewage Treatment Plant) - West Chicago, Illinois

*Montrose Chemical Corp., Torrance, California.* The Montrose Chemical Corp. Site in Torrance, California, was part of the October 15, 1984 (49 FR 40320) proposal. EPA is deferring final rulemaking on this site until additional air monitoring is completed. The site was scored with an observed release of DDT to the air based on the presence of DDT in several soil samples surrounding the site. The Agency believes that additional sampling may confirm an air release from this site.

*Quail Run Mobile Manor Site, Gray Summit, Missouri.* The Agency has not made a final decision on the promulgation of the Quail Run Mobile Manor Site in Gray Summit, Missouri, at this time. The site was originally proposed in Update #1 (48 FR 40674, September 8, 1983) on the basis of a proposed health advisory listing criterion, rather than on an HRS score of 28.50 or above. This proposed listing criterion was subsequently promulgated (50 FR 37624, September 16, 1985) as Section 300.66(b)(4) of the NCP. The Agency is continuing to evaluate this site. Accordingly, EPA is deferring final rulemaking on the Quail Run Site at this time.

*Other Sites.* EPA has received additional technical information for six sites - the J.H. Baxter Co. Site in Weed, California; Montco Research Products Inc., Site in Hollister, Florida; Michigan Disposal Service (Cork Street Landfill) Site in Kalamazoo, Michigan; Lodi Municipal Well in Lodi, New Jersey; the Brio Refining Co. Site in Friendswood, Texas; and the Sol Lynn/Industrial Transformer Site in Houston, Texas. In order to further evaluate this information, the Agency has decided to defer final rulemaking on these six sites. They will remain in proposed status until a later rulemaking.

#### Name Revisions

A number of changes are being made in the site names in the October 1984 proposal, some in response to information received during the comment period (Table 4). The changes are intended to reflect more accurately the location or nature of the problems at the site, or to give each site a unique name.

The following site, placed on the NPL in October 1984, is also being renamed;

- American Creosote Works in Pensacola, Florida, becomes American Creosote Works, Inc. (Pensacola Plant).

#### Table 4 Changes in Site Names

##### Site Name on Proposed NPL and Site Name on Final NPL

##### California:

Alviso Dumping Areas, Alviso - South Bay Asbestos Area  
 Thompson-Hayward Chemical Co., Fresno - T.H. Agriculture & Nutrition Co.  
 Zeocon Corp./Rhône-Poulenc, Inc., East Palo Alto - Rhône-Poluenc, Inc./Zeocon Corp.

##### Minnesota:

Pine Bend Sanitary Landfill/Crosby American Demolition Landfill, Dakota County - Pine Bend Sanitary Landfill

##### Pennsylvania:

Domino Salvage Yard, Valley Township - MW Manufacturing

**Tennessee:**

American Creosote Works, Inc., Jackson - American Creosote Works Inc. (Jackson Plant)

**Utah:**

Sharon Steel Corp. (Midvale Smelter) - Sharon Steel Corp. (Midvale Tailings)

**Wisconsin:**

Lemberger Fly Ash Landfill, Whitelaw - Lemberger Landfill, Inc.

**Comments on Sites Not Proposed**

EPA received comments on a few sites that were not proposed as candidates for the NPL. These sites include: Kesterson Wildlife Refuge, Los Banos, California; Prewitt Refinery, Prewitt, New Mexico; Lake Erie (Ashtabula North Shore), Ashtabula, Ohio; and Buckingham County Landfill, Buckingham Courthouse, Virginia.

In response, EPA updates the NPL using rulemaking procedures established pursuant to the Administrative Procedure Act. One of these sites, Buckingham Courthouse, Virginia has been proposed for the NPL in the April 10, 1985, update to the NPL (50 FR 14115) as Love's Container Service Landfill. Since the rest of these sites have not been proposed for the NPL, they are not eligible for action in this final rule. EPA is working with the States to evaluate the hazards at these sites and determine the appropriateness of including them on the NPL.

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**VII. Deletions of Final Sites**

There is no specific statutory requirement that the NPL be revised to delete sites. However, EPA has decided to delete sites to provide incentives for cleanup to private parties and public agencies. Furthermore, deleting sites allows the Agency to drive notice that the sites have been cleaned up and gives the public an opportunity to comment on those actions. Section 300.66(c)(7) of the NCP establishes criteria for deleting sites from the NPL. Under § 300.66(c)(7), a site may be deleted where no further response is appropriate. In making this determination, EPA will consider whether any of the following criteria has been met:

1. EPA in consultation with the State has determined that responsible or other parties have implemented all appropriate response actions required;
2. All appropriate Fund-financed response under CERCLA has been implemented, and EPA, in consultation with the State, has determined that no further cleanup by responsible parties is appropriate; or
3. Based on remedial investigation, EPA, in consultation with the State, has determined that the release poses no significant threat to public health or the environment, and therefore, remedial measures are not appropriate.

Sites that have been deleted from the NPL remain eligible for further Fund-financed remedial actions if future conditions warrant such action.

The criteria and procedures for deleting sites from the NPL were outlined initially in a guidance memorandum dated March 27, 1984. EPA solicited comments on the deletion criteria and procedures when EPA proposed the second update to the NPL (49 FR 40322, October 15, 1985). EPA again solicited comments when the NCP amendments were proposed (50 FR 5862, February 12, 1985). The November 20, 1985, promulgation of amendments to the NCP reflects EPA's consideration of all the comments received on the criteria for deletion of sites on the NPL (50 FR 47912).

On December 31, 1985 (50 FR 53448), EPA published a notice of intent to delete eight sites from the NPL. EPA accepted comments on the deletion of these sites and published a notice on March 7, 1986 (51 FR 7935) indicating that the following sites have been deleted from the NPL:

- Taputimu Farm, Island of Tutuila, American Samoa
- PCB Warehouse, Saipan, Commonwealth of the Northern Mariana Islands
- Morris Arsenic Dump, Morris, Minnesota
- Friedman Property (once listed as Upper Freehold Township). Upper Freehold Township, New Jersey

- PCB Spills, 243 Miles of Road, North Carolina
- Enterprise Avenue, Philadelphia, Pennsylvania
- Lehigh Electric & Engineering Co., Old Forge Borough, Pennsylvania
- PCB Wastes, Trust Territory of the Pacific Islands

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## VIII. Contents of the NPL

CERCLA requires that the NPL include, if practicable, at least 400 sites. The NCP amendment published today contains a total of 703 entries, including 170 new sites. The 170 sites added to the final list are shown in Table 5 by rank. Each entry contains the name of the facility, the State and city or county in which it is located, and the corresponding EPA Region. For informational purposes, each entry is accompanied by a notation on the current status of response and cleanup activities at the site. The definitions of the response categories and cleanup status codes are described more fully below.

### BILLING CODE 6560-50-M

**Table 5**  
**National Priorities List (by Rank) - Sites Added In May 1986**

#### Group 2

NPL RANK	EPA RG	ST	SITE NAME *	CITY/COUNTY	RESPONSE CATEGORY #	CLEANUP STATUS @
54	04	FL	Peak Oil Co./Bay Drum Co.	Tampa	R	
68	05	IN	International Minerals (E. Plant)	Terre Haute	D	
71	09	CA	Operating Industries, Inc. Lndfil	Monterey Park	F	

#### Group 3

NPL RANK	EPA RG	ST	SITE NAME *	CITY/COUNTY	RESPONSE CATEGORY #	CLEANUP STATUS @
112	08	UT	Portland Cement (Kiln Dust 2 & 3)	Salt Lake City	V S	
117	10	WA	Midway Landfill	Kent	R	I
128	06	TX	Bailey Waste Disposal	Bridge City	R	
131	05	MI	Thermo-Chem, Inc.	Muskegon	D	
140	05	MN	Pine Bend Sanitary Landfill	Dakota County	S	
141	07	IA	Lawrence Todtz Farm	Camanche	D	

#### Group 4



NPL RANK	EPA RG	ST	SITE NAME *	CITY/COUNTY	RESPONSE CATEGORY #	CLEANUP STATUS @
159	05	OH	Industrial Excess Landfill	Uniontown	R S	I
163	02	NY	Liberty Industrial Finishing	Farmingdale	V S	
181	04	NC	Celanese (Shelby Fiber Operations)	Shelby	D	
184	05	MI	Motor Wheel, Inc.	Lansing	D	O
186	06	TX	Stewco, Inc.	Waskom	R F	O
192	02	NY	Johnstown City Landfill	Town of Johnstown	D	
193	04	NC	NC State U (Lot 86, Farm Unit #1)	Raleigh	D	
196	03	PA	Hunterstown Road	Straban Township	R F	O

## Group 5

NPL RANK	EPA RG	ST	SITE NAME *	CITY/COUNTY	RESPONSE CATEGORY #	CLEANUP STATUS @
213	08	CO	Eagle Mine	Minturn/Redcliff	R S	O
219	07	MO	Lee Chemical	Liberty	D	O
223	05	MI	Torch Lake	Houghton County	D	
224	01	RI	Central Landfill	Johnston	V F S	
228	03	PA	MW Manufacturing	Valley Township	S	
233	03	PA	Whitmoyer Laboratories	Jackson Township	D	
235	03	PA	Shriver's Corner	Straban Township	R F	O
239	05	IL	Pagel's Pit	Rockford	D	O
240	05	MN	U of Minnesota Rosemount Res Center	Rosemount	S	
241	05	MN	Freeway Sanitary Landfill	Burnsville	D	
245	04	MS	Newsom Brothers/Old Reichhold	Columbia	R	O
250	05	IN	Columbus Old Municipal Lndfl #1	Columbus	D	

## Group 6

NPL RANK	EPA RG	ST	SITE NAME *	CITY/COUNTY	RESPONSE CATEGORY #	CLEANUP STATUS @
253	02	NY	Tronic Plating Co., Inc.	Farmingdale	D	
258	02	NJ	Waldick Aerospace Devices, Inc.	Wall Township	R S	O
263	09	CA	South Bay Asbestos Area	Alviso	R	I
274	10	OR	Martin-Marietta Aluminum Co.	The Dalles	V	
275	08	CO	Uravan Uranium (Union Carbide)	Uravan	D	
278	05	MN	Oak Grove Sanitary Landfill	Oak Grove Township	R	
287	05	OH	AlSCO Anaconda	Gnadenhutten	S	
292	04	AL	Interstate Lead Co. (ILCO)	Leeds	V R F S	O

## Group 7

NPL RANK	EPA RG	ST	SITE NAME *	CITY/COUNTY	RESPONSE CATEGORY #	CLEANUP STATUS @
305	05	IN	Fort Wayne Reduction Dump	Fort Wayne	R	
307	05	WI	National Presto Industries, Inc.	Eau Claire	D	
311	03	MD	Mid-Atlantic Wood Preservers, Inc	Harmans	D	
319	06	TX	Odessa Chromium #1	Odessa	R	
320	06	TX	Odessa Chromium #2 (Andrews Hgwy)	Odessa	R	
321	07	NE	Hastings Ground Water Contamin	Hastings	R	
325	09	CA	San Fernando Valley (Area 1)	Los Angeles	D	
326	09	CA	San Fernando Valley (Area 2)	Los Angeles/Glendale	D	
327	09	CA	San Fernando Valley (Area 3)	Glendale	D	
328	09	CA	T.H. Agriculture & Nutrition Co.	Fresno	D	
332	04	NC	Jadco-Hughes Facility	Belmont	D	

Monitor

333	02	NJ	Monitor Devices/Intercircuits Inc	Wall Township	D	
337	02	NY	Hooker Chemical/Ruco Polymer Corp	Hicksville	D	
340	02	NY	Applied Environmental Services	Glenwood Landing	S	I
342	01	NH	Tibbets Road	Barrington	R	O

**Group 8**

NPL RANK	EPA RG	ST	SITE NAME *	CITY/COUNTY	RESPONSE CATEGORY #	CLEANUP STATUS @
352	05	MI	Roto-Finish Co., Inc.	Kalamazoo	D	O
353	05	MN	Olmsted County Sanitary Landfill	Oronoco	D	
354	07	MO	Quality Plating	Sikeston	D	
362	10	WA	Toftdahl Drums	Brush Prairie	R	O
363	06	TX	Texarkana Wood Preserving Co.	Texarkana	D	
370	09	CA	Westinghouse (Sunnyvale Plant)	Sunnyvale	D	
373	05	MI	H. Brown Co., Inc.	Grand Rapids	D	
374	02	NY	Nepera Chemical Co., Inc.	Maybrook	V	
380	02	NY	Pasley Solvents & Chemicals, Inc.	Hempstead	D	
387	01	RI	Davis (GSR) Landfill	Glocester	D	
391	06	TX	South Cavalcade Street	Houston	V F	
397	05	IL	Petersen Sand & Gravel	Libertyville	R	

**Group 9**

NPL RANK	EPA RG	ST	SITE NAME *	CITY/COUNTY	RESPONSE CATEGORY #	CLEANUP STATUS @
401	08	MT	Idaho Pole Co.	Bozeman	D	I
406	05	MN	Windom Dump	Windom	D	
408	05	IL	NL Industries/Taracorp Lead Smelt	Granite City	V F S	
415	02	NJ	Cinnaminson Ground Water Contamin	Cinnaminson Township	R	
418	04	NC	Bypass 601 Ground Water Contamin	Concord	D	
419	07	MO	Solid State Circuits, Inc.	Republic	R F S	O
420	07	NE	Waverly Ground Water Contamin	Waverly	R	
421	09	CA	Advanced Micro Devices, Inc.	Sunnyvale	D	
432	03	PA	Brown's Battery Breaking	Shoemakersville	R F	O
433	02	NY	SMS Instruments, Inc.	Deer Park	D	
436	02	NY	Byron Barrel & Drum	Byron	R F	O
438	02	NY	Anchor Chemicals	Hicksville	D	
439	05	MI	Waste Management-Mich (Holland)	Holland	D	
440	06	TX	North Cavalcade Street	Houston	R	

Group 10

NPL RANK	EPA RG	ST	SITE NAME *	CITY/COUNTY	RESPONSE CATEGORY #	CLEANUP STATUS @
456	05	IN	Neal's Dump (Spencer)	Spencer	F S	O
458	03	PA	Westinghouse Elevator Co. Plant	Gettysburg	R F	O
465	05	WI	Stoughton City Landfill	Stoughton	D	
468	03	PA	Middletown Air Field	Middletown	D	O
473	03	WV	Ordinance Works Disposal Areas	Morgantown	F	
476	02	NY	Suffern Village Well Field	Village of Suffern	R	
477	02	NY	Endicott Village Well Field	Village of Endicott	R	
478	05	MN	Kummer Sanitary Landfill	Bemidji	R	I
479	05	OH	Sanitary Landfill Company (IWD)	Dayton	D	
481	07	MO	Valley Park TCE	Valley Park	D	
482	09	CA	San Fernando Valley (Area 4)	Los Angeles	D	
489	03	VA	Avtex Fibers, Inc.	Front Royal	D	
492	02	NY	Katonah Municipal Well	Town of Bedford	R	O
497	04	TN	American Creosote (Jackson Plant)	Jackson	R	O
500	02	NY	Preferred Plating Corp.	Farmingdale	D	

## Group 11

NPL RANK	EPA RG	ST	SITE NAME *	CITY/COUNTY	RESPONSE CATEGORY #	CLEANUP STATUS @
502	08	UT	Monticello Rad Contaminated Props	Monticello	R	
505	01	MA	Salem Acres	Salem	D	
515	10	WA	Mica Landfill	Mica	D	
522	02	NY	Clothier Disposal	Town of Granby	R	
523	03	PA	Ambler Asbestos Piles	Ambler	V R F S	O
525	03	VA	L.A. Clarke & Son	Spotsylvania County	R	
527	03	MD	Southern Maryland Wood Treating	Hollywood	R	O
529	09	CA	Beckman Instruments (Porterville)	Porterville	D	
530	04	FL	Dubose Oil Products Co.	Cantonment	S	O
535	05	WI	Lemberger Landfill, Inc.	Whitelaw	S	
541	03	PA	Modern Sanitation Landfill	Lower Windsor Twp	V S	
543	05	MI	North-Bronson Industrial Area	Bronson	D	
548	10	WA	Northwest Transformer	Everson	R	O
549	05	WI	Sheboygan Harbor & River	Sheboygan	D	

## Group 12

NPL RANK	EPA RG	ST	SITE NAME *	CITY/COUNTY	RESPONSE CATEGORY #	CLEANUP STATUS @
552	02	NY	North Sea Municipal Landfill	North Sea	R	O
554	09	CA	Louisiana-Pacific Corp.	Oroville	D	
555	05	MI	South Macomb Disposal (Lf 9 & 9A)	Macomb Township	D	
560	02	NY	Hertel Landfill	Plattekill	D	
561	02	NY	Haviland Complex	Town of Hyde Park	R	
562	05	MN	Adrian Municipal Well Field	Adrian	R	
564	07	KS	Strother Field Industrial Park	Cowley County	V S	O
565	02	NJ	Fried Industries	East Brunswick Twp	R	O
569	02	NY	Goldisc Recordings, Inc.	Molbrook	V	
572	02	NY	Sarney Farm	Amenia	R	
573	01	MA	Rose Disposal Pit	Lanesboro	F S	
574	05	OH	Van Dale Junkyard	Marietta	D	
577	02	NY	Volney Municipal Landfill	Town of Volney	V R S	O
578	02	NY	FMC Corp. (Dublin Road Landfill)	Town of Shelby	V S	
580	04	KY	Smith's Farm	Brooks	R	O
582	07	KS	Big River Sand Co.	Witchita	R	
587	06	TX	Crystal City Airport	Crystal City	R	O
592	02	NY	Cortese Landfill	Vil of Narrowsburg	V S	
596	07	IA	Midwest Manufacturing/North Farm	Kellogg	D	
600	02	NJ	Pomona Oaks Residential Wells	Galloway Township	R	O

Group 13

NPL RANK	EPA RG	ST	SITE NAME *	CITY/COUNTY	RESPONSE CATEGORY #	CLEANUP STATUS @
602	05	MN	Long Prairie Ground Water Contam	Long Prairie	R	
603	05	MN	Waite Park Wells	Waite Park	R	
604	09	CA	Intel Magnetics	Santa Clara	D	
605	09	CA	Intel Corp. (Santa Clara III)	Santa Clara	D	
610	02	NY	Kenmark Textile Corp.	Farmingdale	D	I
612	04	KY	Maxey Flats Nuclear Disposal	Hillsboro	R	
613	08	MT	Mouet Industries	Columbus	D	
614	02	NY	Claremont Polychemical	Old Bethpage	V S	
616	03	PA	Croydon TCE	Croydon	D	
617	07	IA	Vogel Paint & Wax Co.	Orange City	S	
618	05	MN	Kurt Manufacturing Co.	Fridley	S	
620	06	TX	Koppers Co., Inc. (Texarkana Pit)	Texarkana	V F	
622	08	CO	Smuggler Mountain	Pitkin County	V F	
625	05	MI	Avenue "E" Ground Water Contamin	Traverse City	S	
629	05	MN	Koch Refining Co./N-Ren Corp.	Pine Bend	V S	
631	05	WI	Fadrowski Drum Disposal	Franklin	D	
636	03	DE	Halby Chemical Co.	New Castle	D	
640	06	AR	Midland Products	Ola/Birta	R	
641	02	NY	Robintech, Inc./National Pipe Co.	Town of Vestal	R	
642	02	NY	BEC Trucking	Town of Vestal	D	
646	03	VA	Rhinehart Tire Fire Dump	Frederick County	V R F	O

## Group 14



NPL RANK	EPA RG	ST	SITE NAME *	CITY/COUNTY	RESPONSE CATEGORY #	CLEANUP STATUS @
654	01	MA	Haverhill Municipal Landfill	Haverhill	D	
657	02	NY	Colesville Municipal Landfill	Town of Colesville	D	O
658	04	FL	Yellow Water Road Dump	Baldwin	R F	O
661	05	IN	MIDCO II	Gary	R F	O
662	03	MD	Kane & Lombard Street Drums	Baltimore	R	O
664	10	WA	Silver Mountain Mine	Loomis	R	O
665	06	TX	Petro-Chemical (Turtle Bayou)	Liberty County	R	
666	05	OH	Republic Steel Corp. Quarry	Elyria	D	
668	09	CA	Intel Corp. (Mountain View Plant)	Mountain View	F	
669	09	CA	Raytheon Corp.	Mountain View	F	I
670	05	MN	Agate Lake Scrapyard	Fairview Township	R	O
672	01	MA	Shpack Landfill	Norton/Attleboro	D	
674	01	MA	Norwood PCBs	Norwood	R	O
678	05	IN	Tri-State Plating	Columbus	D	
680	01	NH	Coakley Landfill	North Hampton	V R S	
684	05	WI	Wausau Ground Water Contamination	Wausau	R	O
688	07	MO	North-U Drive Well Contamination	Springfield	R	O
693	10	WA	Northside Landfill	Spokane	R	O
694	06	OK	Sand Springs Petrochemical Cmplx	Sand Springs	R F	O
695	06	TX	Pesses Chemical Co.	Forth Worth	R	O
696	05	MN	East Bethel Demolition Landfill	East Bethel Township	D	

## Group 15

NPL RANK	EPA RG	ST	SITE NAME *	CITY/COUNTY	RESPONSE CATEGORY #	CLEANUP STATUS @
702	07	MO	Bee Cee Manufacturing Co.	Malden	D	

NUMBER OF NPL SITES: 170

\*: STATES' DESIGNATED TOP PRIORITY SITES

#: V = VOLUNTARY OR NEGOTIATED RESPONSE;  
R = FEDERAL AND STATE RESPONSE;  
F = FEDERAL ENFORCEMENT;  
S = STATE ENFORCEMENT;  
D = ACTIONS TO BE DETERMINED.

@: I = IMPLEMENTATION ACTIVITY UNDERWAY, ONE OR MORE OPERABLE UNITS;  
O = ONE OR MORE OPERABLE UNITS COMPLETED, OTHERS MAY BE UNDERWAY;  
C = IMPLEMENTATION ACTIVITY COMPLETED FOR ALL OPERABLE UNITS.

#### BILLING CODE 6560-50-C

The new sites added to the NPL are incorporated into the previously promulgated NPL in order of their HRS score (except where EPA modified the order to reflect top priorities designated by the States, as discussed in the following paragraph). The NPL is presented in groups of 50 sites to emphasize the fact that minor differences in HRS scores do not necessarily represent significantly different levels of risk. EPA considers the sites within a group to have approximately the same priority for response actions.

Section 105(8)(B) of CERCLA requires that, to the extent practicable, the NPL include within the 100 highest priorities at least one facility designated by each State as representing the greatest danger to public health, welfare, or the environment among known facilities in the State. Because States are not required to rely on the HRS in designating their top-priority sites, the HRS scores of some of these sites would not have placed them among the first 100. Consequently, these lower-scoring State priority sites are listed at the bottom of the first 100 sites. All top-priority sites designated by States are indicated by asterisks.

For informational purposes, the NPL includes several categories of notation reflecting the status of response and cleanup activities at these sites at the time this list was prepared. Because this information may change periodically, these notations may become outdated. The response categories and cleanup status codes are defined below:

#### Response Categories

The following response categories are used to designate the type of response underway. One or more categories may apply to each site.

*Federal and/or State response (R).* The Federal and/or State Response category includes sites at which EPA or State agencies have started or completed response actions. These include removal actions, non-enforcement remedial investigations/feasibility studies, initial remedial measures, and/or remedial actions under CERCLA [NCP, § 300.66(f)(i) 47 FR 31217, July 16, 1982]. For purposes of assigning a category, the response action commences when EPA obligates funds.

*Federal enforcement (F).* This category includes sites where the United States has filed a civil complaint (including cost recovery actions) or issued an administrative order under CERCLA or RCRA. It also includes sites at which a Federal court has mandated some form of response action following a judicial proceeding. All sites at which EPA has obligated funds for enforcement-lead remedial investigations and feasibility studies also are included in this category.

A number of sites on the NPL are the subject of investigations or have been formally referred to the Department of Justice for possible enforcement action. EPA's policy is not to release information concerning a possible enforcement action until a lawsuit has been filed. Accordingly, sites subject to pending Federal action are not included in this category, but are included under "Category To Be Determined."

*State enforcement (S).* This category includes sites where a State has filed a civil complaint or issued an administrative order. It also includes sites at which a State court has mandated some form of

response action following a judicial proceeding. Sites where a State has obligated funds for enforcement-lead remedial investigations and feasibility studies are also included in this category.

It is assumed that State policy is not to release information concerning possible enforcement actions until such action has been formally taken. Accordingly, sites subject to pending State legal action are not included in this category, but are included under "Category To Be Determined."

*Voluntary or negotiated response (V).* Sites are included in this category if private parties have started or completed response actions pursuant to consent agreements, consent orders or consent decrees to which EPA and/or the State is a party. Usually, the response actions result from a Federal or State enforcement action. This category includes privately-financed remedial investigations/feasibility studies, removal actions, initial remedial measures, and/or remedial actions.

*Category to be determined (D).* This category includes all sites not listed in any other category. A wide range of activities may be in progress at sites in this category. EPA or a State may be evaluating the type of response action to undertake, or a response action may be determined but funds are not yet obligated. A site where an enforcement action may be under development, or Federal or State legal action has been initiated under authorities other than CERCLA or RCRA are also included in this category. Responsible parties may be undertaking cleanup actions that are not covered by a consent decree, consent agreement, or an administrative order.

### **Cleanup Status Codes**

EPA indicates the status of Fund-financed or private party cleanup activities underway or completed at NPL sites. Fund-financed response activities which are coded include: significant removal actions, initial remedial measures, source control remedial actions, and off-site remedial actions. The status of cleanup activities conducted by responsible parties under a consent decree, consent agreement, court order, or administrative order also is coded. Additionally coded are similar cleanup activities taken independently of EPA and/or the State. Remedial planning activities or engineering studies do not receive a cleanup status code.

Many sites listed on the NPL are cleaned up in stages or "operable units." For purposes of cleanup status coding, an operable unit is a discrete action taken as part of the entire site cleanup that significantly decreases or eliminates a release, threat of release, or pathway of exposure. One or more operable units may be necessary to complete the cleanup of a hazardous waste site. Operable units may include significant removal actions taken to stabilize deteriorating site conditions or provide alternative water supplies, initial remedial measures, and remedial actions. Simple removal actions such as building fences and berms which do not eliminate a significant release, threat of release, or pathway exposure are not considered an operable unit for purposes of cleanup status coding.

The following cleanup status codes are used to designate the status of cleanup activities at NPL sites. Only one status code is necessary to denote the status of actual cleanup activity at each site since the codes are mutually exclusive.

*Implementation activities are underway for one or more operable units (I).* Field work is in progress at the site for implementation of one or more removal or remedial operable units, but no operable units are completed.

*Implementation activities are completed for one or more (but not all) operable units. Implementation activities may be underway for additional operable units (O).* Field work has been completed for one or more operable units, but additional site cleanup actions are necessary.

*Implementation activities are completed for all operable units (C).* The approved remedy has been implemented. All actions agreed upon for remedial action at the site have been completed, and performance monitoring has commenced. The site will be considered for deletion from the NPL subsequent to completion of the performance monitoring and preparation of a deletion recommendation. Further site activities could occur if EPA considers such activities necessary.

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## **IX. Regulatory Impact Analysis**

The cost of cleanup actions that may be taken at sites are not directly attributable to listing on the NPL, as explained below. Therefore, the Agency has determined that this rulemaking is not a "major" regulation under Executive Order 12291. EPA has conducted a preliminary analysis of economic implications of today's amendment to the NCP. EPA believes that the kinds of economic effects associated with this revision are generally similar to those effects identified in the regulatory impact analysis (RIA) prepared in 1982 for the revisions to the NCP pursuant to section 105 of CERCLA and

the economic analysis prepared when the amendments to the NCP were proposed (50 FR 5882, February 12, 1985). The Agency believes the anticipated economic effects related to adding 170 sites to the NPL can be characterized in terms of the conclusions of the earlier regulatory impact analysis and the most recent economic analysis.

### Costs

EPA has determined that this rulemaking is not a "major" regulation under Executive Order 12291 because inclusion of a site on the NPL does not itself impose costs. It does not establish that EPA will necessarily undertake remedial action, nor does it require any action by a private party or determine its liability for site response costs. Costs that arise out of site responses result from site-by-site decisions about what actions to take, not directly from the act of listing itself. Nonetheless, it is useful to consider the costs associated with responding to all sites included in this rulemaking.

Costs associated with responsible party searches are initially borne by EPA. Responsible parties may bear some or all costs of the remedial investigation/feasibility study (RI/FS), design and construction, and operation and maintenance (O&M), or the costs may be shared by EPA and the States on a 90%:10% basis (50%:50% in the case of publicly-owned sites). Additionally, States assume all costs for O&M activities after the first year at sites involving Fund-financed remedial actions.

Rough estimates of the average per-site and total costs associated with each of the above activities are presented below. At this time, EPA is unable to predict what portions of the total costs will be borne by responsible parties, since the distribution of costs depends on the extent of voluntary and negotiated response and the success of any cost recovery actions.

Cost category	Average total cost per site <sup>1</sup>
RI/FS	\$800,000
Remedial design	440,000
Remedial action	7,200,000 <sup>2</sup>
Net present value of O&M (over 30 yrs.) <sup>3</sup>	3,770,000 <sup>2</sup>

Source: "Extent of the Hazardous Release Problem and Future Funding Needs - CERCLA Section 301(a)(1)(c) Study", December 1984, Office of Solid Waste and Emergency

Response, U.S. EPA <sup>1</sup> 1984 U.S. dollars.

<sup>2</sup> Includes State cost share.

<sup>3</sup> Assumes cost of O&M over 30 years, \$400,000 for the first year, and 10% discount rate.

Costs to States associated with today's amendment arise from the required State costs-share of:

1. 10 percent of remedial action and 10 percent of first year O&M costs at privately-owned sites; and
2. at least 50 percent of the remedial planning (RI/FS and remedial design), remedial action and first year O&M costs at publicly-owned sites.

States will assume all of the cost for O&M after the first year. Using the assumptions developed in the 1982 RIA for the NCP, EPA has assumed that 90 percent of the 170 sites added to the NPL in this amendment will be privately-owned and 10 percent will be State or locally-owned. Therefore, using the budget projections presented above, the cost to States of undertaking Federal remedial actions at all 170 sites would be \$764 million, of which \$582 million is attributable to the State O&M cost.

Listing a hazardous waste site on the final NPL does not itself cause firms responsible for the site to bear costs. Nonetheless, a listing may induce firms to clean up the sites voluntarily, or it may act as a potential trigger for subsequent enforcement or cost recovery actions. Such actions may impose costs on firms, but the decisions to take such actions are discretionary, and made on a case-by-case basis. Consequently, precise estimates of these effects cannot be made. EPA does not believe that every site will be cleaned up by a responsible party. EPA cannot project at this time which firms or industry sectors will bear specific portions of the response costs, but the Agency considers: the volume and nature of the wastes at the sites; the strength of the evidence linking the wastes at the site to the parties; the parties' ability to pay; and other factors when deciding whether and how to proceed

against potentially responsible parties.

Economy-wide effects of this amendment are aggregations of effects on firms and State and local governments. Although effects could be felt by some individual firms and States, the total impact of this revision on output, prices, and employment is expected to be negligible at the national level, as was the case in the 1982 RIA.

### **Benefits**

The real benefits associated with today's amendment to list additional sites on the NPL are increased health and environmental protection as a result of increased public awareness of potential hazards. In addition to the potential for more Federally-financed remedial actions, expansion of the NPL could accelerate privately-financed, voluntary cleanup efforts to avoid potential adverse publicity, private lawsuits, and/or Federal or State enforcement action. Listing sites as national priority targets may also give States increased support for funding responses at particular sites.

As a result of the additional NPL remedies, there will be lower human exposure to high risk chemicals, and higher quality surface water, ground water, soil, and air. The magnitude of these benefits is expected to be significant, although difficult to estimate in advance of completing the RI/FS at these sites.

Associated with the costs are significant potential benefits and cost offsets. The distributional costs to firms of financing NPL remedies have corresponding "benefits" in that funds expended for a response generate employment, directly or indirectly (through purchased materials).

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## **X. Regulatory Flexibility Act Analysis**

The Regulatory Flexibility Act of 1980 requires EPA to review the impacts of this action on small entities, or certify that the action will not have a significant impact on a substantial number of small entities. By small entities the Act refers to small businesses, small governmental jurisdictions, and nonprofit organizations.

While modifications to the NPL are considered revisions to the NCP, they are not typical regulatory changes since the revisions do not automatically impose costs. The listing of sites on the NPL does not in itself require any action of any private party, nor does it determine the liability of any party for the cost of cleanup at the site. Further, no identifiable groups are affected as a whole. As a consequence, it is hard to predict impacts on any group. A site's inclusion on the NPL could increase the likelihood that adverse impacts to responsible parties (in the form of cleanup costs) will occur, but EPA cannot identify the potentially affected businesses at this time nor estimate the number of small businesses that might be affected.

The Agency does expect that certain industries and firms within industries that have caused a proportionately high percentage of waste site problems could be significantly affected by CERCLA actions. However, EPA does not expect the impacts from the listing of these 170 sites to have a significant economic impact on a substantial number of small businesses.

In any case, economic impacts would only occur through enforcement and cost recovery actions which are taken at EPA's discretion on a site-by-site basis. EPA considers many factors when determining what enforcement actions to take, including not only the firm's contribution to the problem, but also the firm's ability to pay. The impacts (from cost recovery) on small governments and nonprofit organizations would be determined on a similar case-by-case basis.

### **List of Subjects in 40 CFR Part 300**

Air pollution control, Chemicals, Hazardous materials, Intergovernmental relations, Natural resources, Oil pollution, Reporting and recordkeeping requirements, Superfund, Waste treatment and disposal, Water pollution control, Water supply.

### **PART 300 - [AMENDED]**

40 CFR Part 300 is amended to read as follows:

1. The authority citations for Part 300 continues to read as follows:

**Authority:** 42 U.S.C. 9605(8)(B)/CERCLA 105(8)(B).

2. Appendix B of Part 300 is revised to read as set forth below.

Dated: May 19, 1986.

**Jack W. McGraw,**  
*Deputy Assistant Administrator, Office of Solid Waste and Emergency Response.*

**Billing Code 6560-50-M**

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